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ARMOR PIERCING AMMUNITION AND THE CRIMINAL MISUSE AND AVAILABILITY OF MACHINEGUNS AND SILENCERS

COMPLETED

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 641 and Related Bills

ARMOR PIERCING AMMUNITION AND THE CRIMINAL MISUSE AND AVAILABILITY OF MACHINEGUNS AND SILENCERS

MAY 17, 24 AND JUNE 27, 1984

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ARMOR PIERCING AMMUNITION AND THE CRIMINAL MISUSE AND AVAILABILITY OF MACHINEGUNS AND SILENCERS

THURSDAY, MAY 17, 1984

House of Representatives,
Subcommittee on Crime,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2237, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Smith, Shaw, and Sensenbrenner.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, Edward H. O'Connell, and Virginia Sloan, assistant counsel; Thereas A. Bourgeois, staff assistant; Charlene Vanlier, associate counsel; and Phyllis N. Henderson, clerical staff.

Mr. Hughes. The Subcommittee on Crime will come to order.

The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with committee rule 5(a), permission will be granted, unless there is objection. Is there objection?

[No response.]

Mr. Hughes. Hearing none, permission is granted.

Let me first apologize for the delay, but Arlen Specter of Pennsylvania and myself formed a Congressional Crime Caucus, bipartisan in nature, in which my colleagues are members, and are appearing as witnesses. Unfortunately, the conference went over somewhat. So I extend my apologies to my most distinguished colleagues who I know have all kinds of things to do.

98TH CONGRESS
1ST SESSION

H. R. 641

To limit availability and use of handgun bullets that are capable of penetrating certain body armor.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1983

Mr. MINISH introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To limit availability and use of handgun bullets that are capable of penetrating certain body armor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Law Enforcement Officers Protection Act of 1982".

SEC. 2. (a) Whoever, being a licensed importer, manufacturer, or dealer under chapter 44 of title 18, United States Code, imports, manufactures, or sells a restricted handgun bullet, except as specifically authorized by the Secretary of the Treasury for purposes of public safety or national security, shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and the license of such person shall be subject to revocation under such chapter.

(b) Whoever—

(1) uses a restricted handgun bullet to commit any felony for which he may be prosecuted in a court of the United States; or

(2) carries a restricted handgun bullet unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States;

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years. Notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a conviction of such person under this subsection or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony.

SEC. 3. (a) The Secretary of the Treasury may prescribe such regulations as may be necessary to carry out this Act, including regulations requiring appropriate persons to provide samples of bullets for testing under this Act.

(b) Any regulation identifying a bullet as a restricted handgun bullet shall take effect sixty days after the date on which such regulation is promulgated in accordance with applicable law.

SEC. 4. As used in this Act, the term—

(1) "body armor" means a commercially available, soft, lightweight material with penetration resistance equal to or greater than that of eighteen layers of kevlar;

(2) "handgun" means a firearm originally designed to be fired by the use of a single hand; and

(3) "restricted handgun bullet" means a bullet that, as determined by the Secretary of the Treasury, when fired from a handgun with a barrel five inches or less in length, is capable of penetrating body armor.

98TH CONGRESS
1ST SESSION

H. R. 953

To limit availability and use of handgun bullets that are capable of penetrating certain body armor.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1983

Mr. BIAGGI introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 23, 1983

Additional sponsors: Mr. LOWRY of Washington, Mr. STARK, Mr. TORRICELLI, Mr. WON PAT, Mrs. SCHROEDER, Mr. FRANK, Mr. BARNES, Mr. HERTEL of Michigan, Mr. LAFALCE, Mr. MOLINARI, Mr. FROST, Mr. BEILENSON, Mr. EDGAR, Mr. MADIGAN, Mr. GLICKMAN, Mr. RITTER, Mr. EDWARDS of Oklahoma, Mr. WHEAT, Mr. WAXMAN, Mr. DWYER of New Jersey, Mr. BEVILL, Mr. SCHEUER, Mr. DOWNEY of New York, Mr. OTTINGER, Mr. PATTERSON, Mr. FISH, Mr. BEDELL, Mr. HOWARD, Mr. PRITCHARD, Mr. GEJDENSON, Mr. SCHUMER, Mr. CROCKETT, Mr. BROWN of California, Mr. LONG of Maryland, Mr. WASHINGTON, Mr. CORCORAN, Mr. YOUNG of Florida, Mr. MURPHY, Mr. WORTLEY, Mr. AUCOIN, Mr. MILLER of California, Mr. CARPER, Mr. DIXON, Mr. ADDABBO, Mr. VENTO, Mr. MAZZOLI, Mr. MRAZEK, Mr. SOLARZ, Mrs. KENNELLY, Mr. PORTER, Mr. JEFFORDS, Mr. ANNUNZIO, Mr. WHITEHURST, Mr. BERMAN, Mrs. BOXER, Mr. REID, Mr. HYDE, Mr. KILDEE, Mr. MORRISON of Connecticut, Mr. MCCOLLUM, Mr. GREEN, Mr. SMITH of Florida, Mr. TAUKE, Mr. MINISH, Mr. LEVINE of California, Mr. RANGEL, Mr. MINETA, Mr. JONES of North Carolina, Mrs. SCHNEIDER, Mr. LIPINSKI, Mr. GILMAN, Mr. HARTNETT, Mr. SUNIA, Ms. FERRARO, Mr. YATES, Mrs. HALL of Indiana, Mr. LEHMAN of Florida, Mr. GUARINI, Mr. DE LA GARZA, Mr. ANDERSON, Mr. STUDDS, Mr. HOYER, Mr. THOMAS of Georgia, Mr. BORSKI, Mr. GRAY, Mr. DE LUGO, Mr. OBERSTAR, Mr. BONIOR of Michigan, Mr. FEIGHAN, Ms. MIKULSKI, Mr. ROWLAND, Mr. WINN, Mr. PEPPER, Mr. EDWARDS of California, Mr. ZABLOCKI, Mr. ACKERMAN, Mr. DONNELLY, Mr. KASTENMEIER, Mr. GRADISON, Mr. BILIRAKIS, Mr. STOKES, Mr. LANTOS, Mr. ROE, Mr. ST GERMAIN, Mr. MARKEY, Mrs. BYRON, Mr. MOAKLEY, Mr. FOGLIETTA, Mr. CORRADA, Mr. MAVROULES, Mr. SABO, Mr. MCKINNEY, Mr. OWENS, Mr. STRATTON, Mr. WEISS, Mr. RICHARDSON, Mr. WOLPE, Mr. GEKAS, Mr. FAUNTROY, Mrs. HOLT, Mr. FORSYTHE, Mr. HEFTEL of Hawaii, Mr. HORTON, Mr. MOODY, Mr. LEVIN of Michigan, Mr. RAHALL, Mr. SEIBERLING, Mr. FAZIO, Mr.

Bereuter, Mr. Duncan, Mr. Boland, Mr. Britt, Mrs. Roukema, Mr. Martin of New York, Mr. Torres, Mr. Gonzalez, Mr. Fascell, Mr. Marriott, Ms. Kaptur, Mr. Pursell, Mr. Towns, Mr. McDade, Mr. McHugh, Mr. Rodino, Mr. Neal, Mr. Anthony, Mr. Bryant, Mr. Leland, Mr. Ratchford, and Mr. Martinez

Delete sponsors: Mr. Gekas (June 3, 1983) and Mr. Hartnett (June 15, 1983)

A BILL

To limit availability and use of handgun bullets that are capable of penetrating certain body armor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Law Enforcement Officers Protection Act of 1983".

Sec. 2. (a) Whoever, being a licensed importer, manufacturer, or dealer under chapter 44 of title 18, United States Code, imports, manufactures, or sells a restricted handgun bullet, except as specifically authorized by the Secretary of the Treasury for purposes of public safety or national security, shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and the license of such person shall be subject to revocation under such chapter.

(b) Whoever—

(1) uses a restricted handgun bullet to commit any felony for which he may be prosecuted in a court of the United States; or

(2) carries a restricted handgun bullet unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States;

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years. Notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a conviction of such person under this subsection or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony.

SEC. 3. (a) The Secretary of the Treasury may prescribe such regulations as may be necessary to carry out this Act, including regulations requiring appropriate persons to provide samples of bullets for testing under this Act.

(b) Any regulation identifying a bullet as a restricted handgun bullet shall take effect sixty days after the date on which such regulation is promulgated in accordance with applicable law.

SEC. 4. As used in this Act, the term—

(1) "body armor" means a commercially available, soft, lightweight material with penetration resistance equal to or greater than that of eighteen layers of Kevlar;

(2) "handgun" means a firearm originally designed to be fired by the use of a single hand; and

(3) "restricted handgun bullet" means a bullet that, as determined by the Secretary of the Treasury, when fired from a handgun with a barrel five inches or less in length, is capable of penetrating body armor.

What distance?

98TH CONGRESS
1ST SESSION

H. R. 3796

To amend chapter 44 (relating to firearms) of title 18 of the United States Code to provide mandatory penalties for the use of armor-piercing bullets in offenses involving handguns, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1983

Mr. CONTE introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend chapter 44 (relating to firearms) of title 18 of the United States Code to provide mandatory penalties for the use of armor-piercing bullets in offenses involving handguns, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 924 of title 18 of the United States Code is amended by adding at the end the following:

"(e) Whoever carries or uses, during the commission of a felony which may be prosecuted in a court of the United States, a handgun and ammunition of a type which, when fired from that handgun, penetrates body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 (as formulated by the Department of Justice and published in December 1978), shall, in addition to the penalty provided for the commission of such felony, be imprisoned five years. Notwithstanding any other provision of law, the court shall not suspend, or grant probation with respect to, a sentence under this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony. A person sentenced under this subsection is not eligible for parole with respect to that sentence.".

98TH CONGRESS
2D SESSION

S. 1762

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1984
Referred to the Committee on the Judiciary

AN ACT

Entitled the "Comprehensive Crime Control Act of 1984".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Crime Control Act of 1984".

* * * * * * *

Part E—Armor-Piercing Bullets

Sec. 1006. (a) Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 929. Use of restricted ammunition

"(a) Whoever, during and in relation to the commission of a crime of violence including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with armor-piercing ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence be sentenced to a term of imprisonment for not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

“(b) For purposes of this section—

“(1) ‘armor-piercing ammunition’ means ammunition which, when or if fired from any handgun used or carrried in violation of subsection (a) under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978; and

“(2) ‘handgun’ means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand.”.

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

“929. Use of restricted ammunition.”.

* * * * * * *

Mr. HUGHES. More than 2 years ago, this subcommittee held the first congressional hearing on the problem of armor-piercing ammunition and, for the most part, on these same bills to safeguard our Nation's law enforcement officers while wearing protective armor.

At that time just about everyone involved agreed that we faced some tough technical, definitional problems that needed to be solved before we could legislate a ban on handgun ammunition which will penetrate soft body armor being worn by police officers.

In his testimony before this subcommittee, Associate Attorney General Rudy Giuliani accurately summarized the problem as one of, and I quote, "coming up with a definition that would include armor-piercing bullets and exclude what might be regarded as bullets that can be used for other purposes, legitimate purposes."

He stated that the Justice Department had, in working with the Treasury Department, not yet been able to do this, but that, and I quote again, "We should continue to try to do that and we will."

He then proposed what he called a stopgap legislative proposal. This stopgap measure banned no ammunition, but provided additional penalties for carrying a handgun loaded with armor-piercing ammunition during the commission of a felony, much in the same manner as current law already provides additional penalties for carrying a handgun.

Two years have passed, and it is disappointing how little viable progress has been made on this most important matter. While the number of individual and institutional voices calling for passage of legislation to ban so-called cop killer bullets has grown dramatically, little seems to have been done to solve the definitional problems which have dogged this legislation from its inception.

For example, last fall, when my mail began to contain numerous calls for passage of the legislation from law enforcement officers and administrators from all parts of the country, I wrote back describing the technical problems we encountered, and invited recommendations for their solution. I sent some 30 such letters, and received one reply.

The administration's crime package, passed by the Senate earlier this year, addresses this problem with the same stopgap measure advanced by the Justice Department some 2 years ago, namely, mandatory sentencing.

I have noted that the Department of Justice pledged to work toward a solution that would separate bannable handgun ammunition from legitimate ammunition, and I have noted that 2 years later, we have received nothing from them in this regard.

It should not be inferred from these two facts, however, that the blame for lack of progress lies in the failure of the Department of Justice to do its promised work.

This subcommittee and other Members of the Congress, particularly Congressman Biaggi, my good friend from New York, have received periodic reports over the past several months which suggest that progress was being made.

More than a year ago, the Justice Department commissioned developmental work by the Bureau of Standards to develop a test procedure to measure the armor-piercing capacity of various ammunition, which would form the basis of a legislative proposal to ban certain armor-piercing ammunition.

In October, I received a briefing on this work, and it was obviously well under way at that time. In November, we were told that the Justice Department had received the results of the work, and that it had been sent back for what sounded like some debugging. As its best estimate, Justice, at that time, told us they felt both the test procedure and the legislative proposal for ban legislation could be developed, subjected to the usual review and approval process, and submitted to the Congress by early 1984.

Assistant Attorney General Bob McConnell notified us, in January of this year, that the armor-piercing bullet package had been submitted to OMB for approval, and that he was "optimistic that we have now resolved the definitional problems which have plagued this legislation in the past, and that we will have a proposal for submission to the Congress in the near future despite acrimonious public attacks upon our efforts," he stated.

These were encouraging developments to me and many others, particularly my friend Mario Biaggi, who twice a week asked me on the floor, what's happening? And I know right away he is talking about armor-piercing legislation.

Bob McConnell is well-known in the Congress for his pragmatism, and not known for flights of undue optimism, I might say. However, this appears to be one of the few occasions where he was wrong. Four months have passed, Senate hearings on the subject of armor-piercing bullets have come and gone, and still the highest echelons of this administration has refused to enunciate an administration position on cop-killer bullets other than to again advance the temporary stopgap measure from 2 years ago.

It was a comedy last night between Justice and Treasury trying to decide who was going to testify, whether they were going to testify, and what they were going to say. As of this morning at 8 o'clock, I still had not read a single statement from either Treasury or Justice.

Justice indicated they weren't going to come. Then they called back and they did want to come, without submitting a statement. Then they weren't sure they wanted to come. So they are here, and they will not be testifying, we have not received a statement from them. That has been the story now for months.

Yesterday, less than 24 hours before this scheduled hearing, as I have indicated, we were notified that OMB had not taken a position on the longstanding Justice proposal that no position will be taken in advance of our hearing and the Department of Justice was instructed to ask for a postponement, which I refused to grant.

This particular measure is an important one. One in which there are clearly strong differences of opinion within the administration, including differences between the two Departments involved, Justice and Treasury. Under these circumstances, it is rare that the contents of a proposal being kept bottled up by OMB do not leak out. It is rare, and this is not one of those rare occasions. Given the fact that the basic components of the Justice Department study and proposal are known to us, it is a shame that the Justice Department cannot be unmuzzled to present us this particular proposal, explain it, and explain how they arrived at it—then help us work toward a solution to whatever it agrees is a tough technical problem.

Or, if this is not to be the case, the White House should muster the political fortitude to figuratively bite the bullet, reject the proposal, and explain to the policemen of the country why this measure of protection should not be afforded to them.

In closing, let me say this: If there exists the necessary support of the members of this subcommittee, I intend to move forward with this legislation to provide the best possible protection for our police officers against armor-piercing bullets.

Agencies of the executive branch charged with enforcing laws of this nature have a lot of expertise to bring to bear in developing that protection, and a lot of time and taxpayers money has gone into such development.

We would like to have the benefit of that effort in our work; we think we can produce a better solution if we have it, and it would be a shame to have to proceed without it, but if we must, we will.

[The statement of Mr. Hughes follows:]

OPENING STATEMENT OF REPRESENTATIVE WILLIAM J. HUGHES
CHAIRMAN OF THE SUBCOMMITTEE ON CRIME
ON ARMOR PIERCING AMMUNITION: (H.R. 641, H.R.953, H.R. 3796 and S. 1762--S1006)

May 17, 1984

MORE THAN TWO YEARS AGO, THIS SUBCOMMITTEE HELD THE FIRST CONGRESSIONAL HEARINGS ON THE PROBLEM OF ARMOR PIERCING AMMUNITION, AND, FOR THE MOST PART, ON THESE SAME BILLS TO SAFEGAURD OUR NATION'S LAW ENFORCEMENT OFFICERS WHILE WEARING PROTECTIVE ARMOR. AT THAT TIME JUST ABOUT EVERYONE INVOLVED AGREED THAT WE FACED SOME TOUGH TECHNICAL, DEFINITIONAL PROBLEMS THAT NEEDED TO BE SOLVED BEFORE WE COULD LEGISLATE A BAN ON HANDGUN AMMUNITION WHICH WILL PENETRATE SOFT BODY ARMOR BEING WORN BY POLICE OFFICERS. IN HIS TESTIMONY BEFORE THIS SUBCOMMITTEE, ASSOCIATE ATTORNEY GENERAL GIULIANI ACCURATELY SUMMARIZED THE PROBLEM AS ONE OF "COMING UP WITH A DEFINITION THAT WOULD INCLUDE ARMOR-PIERCING BULLETS AND EXCLUDE WHAT MIGHT BE REGARDED AS BULLETS THAT CAN BE USED FOR OTHER PURPOSES, LEGITIMATE PURPOSES." HE STATED THE JUSTICE DEPARTMENT HAD, IN WORKING WITH THE TREASURY DEPARTMENT, NOT YET BEEN ABLE TO DO THIS, BUT THAT, AND I QUOTE "WE SHOULD CONTINUE TO TRY TO DO THAT AND WE WILL." HE THEN PROPOSED WHAT HE CALLED "A STOPGAP LEGISLATIVE PROPOSAL." THIS STOPGAP MEASURE BANNED NO AMMUNITION, BUT PROVIDED ADDITIONAL PENALTIES FOR CARRYING A HANDGUN LOADED WITH ARMOR PIERCING AMMUNITION DURING THE COMMISSION OF A FELONY, MUCH IN THE SAME MANNER AS CURRENT LAW ALREADY PROVIDES ADDITIONAL PENALTIES FOR CARRYING THE GUN.

TWO YEARS HAVE PASSED, AND IT IS DISAPPOINTING HOW LITTLE VISIBLE PROGRESS HAS BEEN MADE ON THIS IMPORTANT MATTER. WHILE THE NUMBER OF INDIVIDUAL AND INSTITUTIONAL VOICES CALLING FOR PASSAGE OF LEGISLATION TO BAN "COP KILLER BULLETS" HAS GROWN DRAMATICALLY, LITTLE SEEMS TO HAVE BEEN DONE TO SOLVE THE DEFINITIONAL PROBLEMS WHICH HAVE DOGGED THIS LEGISLATION FROM ITS INCEPTION. FOR EXAMPLE, LAST FALL, WHEN MY MAIL BEGAN TO CONTAIN NUMEROUS CALLS FOR PASSAGE OF THE LEGISLATION FROM LAW ENFORCEMENT OFFICERS AND ADMINISTRATORS FROM ALL PARTS OF THE COUNTRY, I WROTE BACK DESCRIBING THE TECHNICAL PROBLEMS THAT HAD BEEN IDENTIFIED, AND INVITED RECOMMENDATIONS FOR THEIR SOLUTION. I SENT SOME THIRTY SUCH LETTERS, AND RECEIVED ONLY ONE REPLY.

THE ADMINISTRATION'S CRIME PACKAGE, PASSED BY THE SENATE EARLIER THIS YEAR, ADDRESSES THIS PROBLEM WITH THE SAME STOPGAP MEASURE ADVANCED BY THE JUSTICE DEPARTMENT TWO YEARS AGO, NAMELY MANDATORY SENTENCING.

I HAVE NOTED THAT THE DEPARTMENT OF JUSTICE PLEDGED TO WORK TOWARD A SOLUTION THAT WOULD SEPARATE BANNABLE HANDGUN AMMUNITION FROM LEGITIMATE AMMUNITION, AND I HAVE NOTED THAT, TWO YEARS LATER, WE HAVE RECEIVED NOTHING IN THIS REGARD. IT SHOULD NOT BE INFERRED FROM THESE TWO FACTS, HOWEVER, THAT THE BLAME FOR LACK OF PROGRESS LIES IN THE FAILURE OF THE DEPARTMENT OF JUSTICE TO DO ITS PROMISED WORK. THIS SUBCOMMITTEE AND OTHER MEMBERS OF CONGRESS, PARTICULARLY CONGRESSMAN BIAGGI, HAVE RECEIVED PERIODIC REPORTS OVER THE PAST SEVERAL MONTHS WHICH SUGGEST THAT PROGRESS WAS BEING MADE. MORE THAN A YEAR AGO, THE JUSTICE DEPARTMENT COMMISSIONED DEVELOPMENTAL WORK BY THE

BUREAU OF STANDARDS TO DEVELOP A TEST PROCEDURE TO MEASURE THE ARMOR PIERCING CAPACITY OF VARIOUS AMMUNITION, WHICH WOULD FORM THE BASIS OF A LEGISLATIVE PROPOSAL TO BAN CERTAIN ARMOR PIERCING AMMUNITION.

IN OCTOBER I RECEIVED A BRIEFING ON THIS WORK, AND IT WAS OBVIOUSLY WELL UNDERWAY. IN NOVEMBER WE WERE TOLD THAT THE JUSTICE DEPARTMENT HAD RECEIVED THE RESULTS OF THE WORK, AND THAT IT HAD BEEN SENT BACK FOR WHAT SOUNDED LIKE SOME FINAL "DEBUGGING". AS ITS BEST ESTIMATE, JUSTICE AT THAT TIME TOLD US THEY FELT BOTH THE TEST PROCEDURE AND THE LEGISLATIVE PROPOSAL FOR BAN LEGISLATION COULD BE DEVELOPED, SUBJECTED TO THE USUAL REVIEW AND APPROVAL PROCESS, AND SUBMITTED TO THE CONGRESS BY EARLY 1984. ASSISTANT ATTORNEY GENERAL BOB McCONNELL NOTIFIED US, IN JANUARY, THAT THE ARMOR PIERCING BULLET PACKAGE HAD BEEN SUBMITTED TO OMB FOR APPROVAL, AND THAT HE WAS "OPTIMISTIC THAT WE HAVE NOW RESOLVED THE DEFINITIONAL PROBLEMS WHICH HAVE PLAGUED THIS LEGISLATION IN THE PAST, AND THAT WE WILL HAVE A PROPOSAL FOR SUBMISSION TO THE CONGRESS IN THE NEAR FUTURE DESPITE ACRIMONIOUS PUBLIC ATTACKS UPON OUR EFFORTS."

THESE WERE ENCOURAGING DEVELOPMENTS, FOR BOB McCONNELL IS WELL KNOWN IN THE CONGRESS FOR HIS PRAGMATISM, AND NOT KNOWN FOR FLIGHTS OF UNDUE OPTIMISM. HOWEVER, THIS APPEARS TO BE ONE OF THE FEW OCCASIONS WHERE HE WAS WRONG. FOUR MONTHS HAVE PASSED, SENATE HEARINGS ON THE SUBJECT OF ARMOR PIERCING BULLETS HAVE COME AND GONE, AND STILL THE HIGHEST ECHELONS OF THIS ADMINISTRATION HAS REFUSED TO ENUNCIATE AN ADMINISTRATION

POSITION ON "COP KILLER BULLETS", OTHER THAN TO AGAIN ADVANCE THE TEMPORARY STOPGAP MEASURE FROM TWO YEARS BACK. YESTERDAY, LESS THAN 24 HOURS BEFORE THIS SCHEDULED HEARING, WE WERE NOTIFIED THAT OMB HAD NOT TAKEN A POSITION ON THE LONG STANDING JUSTICE PROPOSAL, THAT NO POSITION WOULD BE TAKEN IN ADVANCE OF OUR HEARING, AND THAT THE DEPARTMENT OF JUSTICE WAS INSTRUCTED TO ASK FOR A POSTPONEMENT. I SUPPOSE WE COULD INSIST UPON THE APPEARANCE OF A BODY FROM THE DEPARTMENT OF JUSTICE BEFORE US TODAY, BUT IT IS THEIR RECOMMENDATIONS AND CONSIDERED OPINION WE WANT AND NEED, AND IT IS OBVIOUS THAT THE WHITE HOUSE HAS NOT AUTHORIZED JUSTICE TO PRESENT TO US THEIR PROPOSAL.

THIS IS AN IMPORTANT MEASURE, ONE IN WHICH THERE ARE CLEARLY STRONG DIFFERENCES OF OPINION WITHIN THE ADMINISTRATION, INCLUDING DIFFERENCES BETWEEN THE TWO DEPARTMENTS INVOLVED, JUSTICE AND TREASURY. UNDER THESE CIRCUMSTANCES, IT IS RARE THAT THE CONTENTS OF A PROPOSAL BEING KEPT BOTTLED UP BY OMB DO NOT LEAK OUT. IT IS RARE, AND THIS IS NOT ONE OF THE RARE OCCASIONS. GIVEN THE FACT THAT THE BASIC COMPONENTS OF THE JUSTICE DEPARTMENT STUDY AND PROPOSAL ARE KNOWN TO US, IT IS A SHAME THAT JUSTICE CANNOT BE UNMUZZLED TO PRESENT IT TO US, EXPLAIN HOW THEY ARRIVED AT IT, AND HELP US WORK TOWARD THE BEST SOLUTION. OR, IF THIS IS NOT TO BE THE CASE, THE WHITE HOUSE SHOULD MUSTER THE POLITICAL FORTITUDE TO FIGURATIVELY BITE THE BULLET, REJECT THE PROPOSAL, AND EXPLAIN TO THE POLICEMEN OF THE COUNTRY WHY THIS MEASURE OF PROTECTION SHOULD NOT BE AFFORDED TO THEM.

IN CLOSING, LET ME SAY THIS. IF THERE EXISTS THE NECESSARY SUPPORT OF THE MEMBERS OF THIS SUBCOMMITTEE, I INTEND TO MOVE FORWARD WITH LEGISLATION TO PROVIDE THE BEST POSSIBLE PROTECTION FOR OUR POLICE OFFICERS AGAINST ARMOR PIERCING BULLETS. AGENCIES OF THE EXECUTIVE BRANCH CHARGED WITH ENFORCING LAWS OF THIS NATURE HAVE A LOT OF EXPERTISE TO BRING TO BEAR ON DEVELOPING THAT PROTECTION, AND A LOT OF TIME AND TAXPAYERS MONEY HAS GONE INTO SUCH DEVELOPMENT. WE WOULD LIKE TO HAVE THE BENEFIT OF THAT EFFORT IN OUR WORK, WE THINK WE CAN PRODUCE A BETTER SOLUTION IF WE HAVE IT, AND IT WOULD BE A SHAME TO HAVE TO PROCEED WITHOUT IT, BUT IF WE MUST, WE WILL.

Mr. HUGHES. The Chair recognizes any other members that might have an opening statement.

The gentleman from Florida.

Mr. SHAW. Thank you, Mr. Chairman. It is a pleasure for me to join with you in welcoming our most distinguished witnesses, many of whom are our good colleagues and good friends.

All of the witnesses before us today share an increased duty to protect our law enforcement officers. Each day our police risk their own lives to protect all members of society. Certainly we owe them our greatest effort to reduce the dangers they face on a daily basis.

One important aspect in our duty to protect these officers is the need to reduce the risk posed by armor-piercing bullets, and to do so in such a way that it does not interfere with the use of bullets for legitimate purposes, such as sporting events.

The distinguished witnesses today are here to comment on two ways in which to address the threat of armor-piercing bullets. Some proposals ban the availability of such bullets, while other proposals would severely punish the improper use of these bullets.

I deeply appreciate this opportunity to address this serious issue and the proposals before us today.

I would like to join with you, Mr. Chairman, and pay special tribute to the two gentlemen at the desk before us today, Senator Moynihan and, of course, Congressman Biaggi. I don't know of any Member on either side, in either House, who knows more about the awful consequences of illegal ammunition or the illegal use of legal ammunition, or guns, than Congressman Biaggi, who, of course, certainly was most distinguished before coming to the Congress of the United States.

Before these gentlemen do start, I would like to, I think, clear up something that I consider to be a myth. I do not see that anything that was going to be before us today has one thing to do with gun control. What we are talking about is a missile that is designed to kill people, more particularly, designed to kill policemen. It is designed to pierce armor.

I do not see any legitimate use of these types of bullets. Even though I consider myself very strong in the area of the right to bear arms, I do not see any similarity or overlapping in these two particular areas.

I am looking forward to the hearings on this legislation and most particularly the testimony of our colleagues who are here today.

Mr. HUGHES. I thank the gentleman for an excellent statement.

The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Let me commend you for again bringing this issue forward and for the statement that you made with reference to the very ambivalent and rather unfortunate position of the administration in this matter.

Let me commend the two gentlemen sitting at the witness table, Congressman Biaggi and Senator Moynihan, both from New York. Congressman Biaggi, who is probably the most decorated policeman in the United States, has, as Mr. Shaw indicated, a rather unfortunate reservoir of memories about bullets.

I would certainly hope that we would be able to move forward very rapidly and pass this legislation possibly this year. As members of a newly formed crime caucus, I think it is as important as anything we can do to show this country that we intend to start on a positive note on the road to protecting our police officers.

Just 2 days ago, there was a gigantic rally in Senate Park, a memorial and tribute to the slain police officers of this country, many of whom would be alive today if it were not for the availability of guns and ammunition to those elements in this society which use it against those police officers.

This particular bill, to ban these bullets, which have no use in our society whatsoever, by any but the most limited circumstances of law enforcement agents, should be banned under all circumstances, and this bill should move forward rapidly.

I was, as the chairman knows, chairman of a criminal justice committee in the Florida Legislature. We tried for 3 years to pass a bill. We have provided two or three definitions, and I have asked my staff to bring those definitions forward here. So hopefully we can assist in determining what would be the definition of an armor-piercing bullet. There are problems in arriving at a definition. But not withstanding those problems, the urgency of this matter and the rightness of it override any considerations about some technical difficulties which, even if we were almost perfect, might have to be resolved in the courts in any event.

I want to commend the two gentlemen for their efforts and their stand. I look forward to being able to pass this. I will certainly agree with my colleague from Florida, this ammunition has nothing to do with gun control whatsoever. It is just not something that we should have in this country.

Frankly, I don't believe that we should punish those who have already used it. Tell that to the families of the slain police officers, that they are going to add another 5 years on the term of the person, if they caught the person who perpetrated the crime—that is absolutely absurd. Save a life, don't punish after they have taken that life, and this is what I think is most important. I would like to see us move forward on that basis.

Again, I am very hopeful that we can do something as quickly as possible on this issue.

Thank you.

Mr. HUGHES. I thank the gentleman for his excellent observations.

Our first panel this morning consists of Congressman Mario Biaggi of New York City and Senator Daniel Patrick Moynihan, the senior Senator from New York.

Congressman Biaggi was elected to Congress in 1968. Prior to that time, he served with great distinction in the police department of the city of New York. He was the most decorated officer in the history of the department and was wounded some 10 times in the line of duty.

Since his election to Congress, his record has been equally distinguished. It has been my great pleasure to serve with Congressman Biaggi on the Merchant Marine and Fisheries Committee where he is a most worthy advocate and adversary, I may say, at times.

I worked closely with him when he was chairman of the Subcommittee on the Coast Guard, and he has moved on to the chairmanship of the Merchant Marine Subcommittee, and a most important assignment.

I might add that Congressman Biaggi's service on both the Education and Labor Committee and the Select Committee on Aging has likewise been a most distinguished one.

Congressman Biaggi has worked closely with the Judiciary Committee and with the Crime Subcommittee as a zealous champion of law enforcement officers in the need for more effective tools to fight crime.

Senator Daniel Patrick Moynihan has had an equally outstanding career in public service and scholarly pursuit. He is the author of numerous well-received books and articles, having served with distinction on the faculty of Harvard University and the Joint Center for Urban Studies.

In Washington, Senator Moynihan served in the administrations of John F. Kennedy, Lyndon Johnson, Richard Nixon, and Gerald Ford.

He was an outstanding Ambassador to India and earned acclaim as our Ambassador to the United Nations.

Senator Moynihan was elected in 1976 and serves on the Select Committee on Intelligence, the Budget and Finance Committees, and the Environment and Public Works Committee.

Gentlemen, on behalf of the subcommittee, welcome. We are just delighted to have you here this morning. You may proceed as you see fit.

TESTIMONY OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK, AND HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman, you are very generous. I have to be back on the Senate side with respect to an intelligence matter and if I may, I will have to leave after making my very brief remarks.

Mr. HUGHES. I understand.

Senator **Moynihan**. I thank this honorable committee for inviting us to testify. I have a written statement, Mr. Chairman, which I would ask be included in the record if you would be so kind.

Mr. **Hughes**. Without objection.

Senator **Moynihan**. I have three things to say. First, something much more than substance is involved in this issue. What is involved is the sincerity of our concern about crime and our commitment to the peace officers of this country.

One of the events of the last decade has been the development of lightweight body armor. And it is the case that about half of the Nation's police officers now use it.

Mr. Chairman, as you know, as this committee knows, this became more than just a new technology, in the face of an increasing willingness of criminals to use handguns against police officers.

All over the country, campaigns took place in which citizens raised the money to provide the body armor for their police officers. It was a kind of bonding that took place. The community said, "Yes, we will raise the money to see that our police have this protection."

Then along came this absolutely indefensible technology of an armor-piercing bullet, a bullet of which my colleague Mario Biaggi will show you a number of varieties, including the famous "green apple" KTW bullet. These projectiles have no purpose of any kind, save to penetrate body armor and kill police officers; that is all they do.

These bullets were first developed for police use, but then the police decided they were too dangerous to employ.

Mr. Chairman, you should know that many of the cop killer bullets for sale in this country today are Communist bullets. And anybody who wants to keep selling them, wants to make sure that Communist Czechoslovakia has a good market in the United States for killing cops. Now, since that is the language that they seem to understand at the other end of Pennsylvania Avenue, let them hear that.

No respectable American manufacturer would have anything to do with these bullets anymore. But the Czechs will sell you anything, and there are people who will buy it.

Second, Mr. Chairman, it is craven of this administration in the face of the opposition of the National Rifle Association to refuse to take this elemental stand on behalf of the police officers of this country.

I have served in the Cabinet, or sub-Cabinet of four Presidents. I say to you, sir, if I was the Attorney General today and could not have a person before this honorable committee testifying on behalf of an elemental matter of law enforcement, I would resign.

I don't know how I would face the Director of the FBI, I don't know how I would consider myself as a person in charge of Justice. I mean, if the Justice Department cannot get this out of OMB, the Attorney General should resign. If the Secretary of the Treasury cannot get the Bureau of Alcohol, Tobacco and Firearms to take this elemental step to protect our police, and if he cannot resist provencial interests against this bill, then he should resign.

Last, sir, I would like to read you a letter. After hearings on the Senate side, which Mr. Biaggi very generously attended, I appeared on the Today Show and was just talking about this question. I got a letter the next day from a professor at Indiana University (Pennsylvania) that said,

> This morning I listened to you and Jane Pauley discuss the "cop killer bullets." Then with disbelief I heard you state the NRA's position. The NRA's position to oppose legislation restricting the Teflon bullet is obscene, irresponsible, and does not serve the greater good. Killing cops and killing deer (game) just do not strike reasonable men as being comparable. Currently, we restrict firearms on aircraft, ownership of operable machine guns, tanks, and cannons. The Teflon bullet is simply such an item not necessary for the civilian arsenal. On the balance of necessity and dangerousness, necessity must yield. As a Life Member of the NRA, my saying this may be more significant than if you say it.
>
> My credentials on this issue are serious. I am a licensed Pennsylvania hunter, a former police officer, British-trained police detective, Ph.D. in Criminology, President-Elect of the Academy of Criminal Justice Sciences, and recently honored guest at Silliman College, Yale University, as a leader in academic.

It is signed by Paul McCauley, Ph.D., professor and chairperson of the department of criminology.

Mr. Chairman, I plead not with you, sir, or this honorable body, as you know very well what reason and justice demand here. If we cannot have the cooperation of the administration, I suggest we simply legislate and do it ourselves, and in the end let Congress fulfill its responsibility in this matter.

[The statement of Senator Moynihan follows:]

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman:

I come before your Subcommittee on behalf of the Nation's 528,000 law enforcement officers. We have but a single purpose: To ask, once again, will the United States Congress enact legislation to protect them from armor-piercing handgun ammunition, capable of penetrating the standard bullet-proof vest now worn routinely by more than 250,000 of these officers? Or will Congress fail to act, for fear of offending the special interest groups that as a matter of orthodoxy will oppose any government restriction on any bullet?

The job of a law enforcement officer is to risk his life, every day, maintaining the peace and ferreting out criminal activities. Our job is to govern. If we do not address the serious danger posed to law enforcement officers by armor-piercing ammunition, commonly referred to as cop-killer bullets, and do not do so promptly, we should and shall be held accountable by the men and women who perform so valiantly at our behest.

Two years ago, I joined with my distinguished colleague in the House and fellow New Yorker, Mario Biaggi -- himself a former police officer wounded 10 times during his 23-year career -- and on behalf of the New York City Police Department, in introducing a bill to ban the manufacture, import, sale, and use of cop-killer bullets. The need to limit the availability of such ammunition was urgent then, and remains so today. The development of bullet-proof vests in the mid-1970s provided law enforcement officers with greater protection than ever before. These vests, made of layers of woven Kevlar, a synthetic fiber produced by the Du Pont Company, have so far been credited with saving the lives of more than 400 officers. The FBI's most recent statistics document that the number of law enforcement officers killed in the line of duty by handguns declined 43 percent from 1974 (when such vests were first made available to police departments) to 1983. These vests, however, are rendered virtually useless by cop-killer bullets.

These small caliber, pointed bullets, usually made of brass or steel, differ from regular ammunition in two chief respects: their rapid speed of travel, and their capacity to retain their shape on impact. Perhaps the best known version of this ammunition is the KTW bullet, manufactured by the North American Ordinance Corporation in Pontiac, Michigan. In a test conducted by the California State Police, this bullet, with an apple green Teflon coating to enhance its penetrating ability, was found capable of piercing four standard bulletproof vests (72 layers of Kevlar) and five Los Angeles County phone books placed behind the vests. The awesome power of the KTW bullet is not significantly greater than other types of armor-piercing ammunition. In fact, a 1982 FBI study identified eight different bullets -- five domestically-produced and three imported -- that can easily pierce the standard vests worn by law enforcement officers (18 layers of Kevlar).

I submit that these bullets have absolutely no commercial value. Armor-piercing bullets were first designed for use by law enforcement officers themselves, shooting at cars and barricades, but since then they have been strictly prohibited by most police departments. In fact, there is not one single police department in the country known to sanction officially the use of this ammunition.

With good reason: Armor-piercing handgun ammunition is too unpredictable for police use. It often richochets off the objects toward which it is fired, significantly increasing the chance of bodily injury to other law enforcement officers and innocent bystanders. Some types of armor-piercing ammunition are so volatile that they damage irreperably the barrel of any handgun from which they are fired. As Captain John Sibley of the Rochester (Minnesota) Police Force observed:

> There can't be any other reason for such bullets in a handgun except to shoot police officers.

Every major law enforcement organization in the United States shares this sentiment. The National Fraternal Order of Police, the International Association of Chiefs of Police, the International Union of Police Associations, the International Brotherhood of Police Officers, the National Association of Police Organizations, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, and the Federal Law Enforcement Officers Association, in addition to hundreds of State and local police groups and the National Association of Counties, strongly support a ban on cop-killer bullets and have urged Congress to act on this legislation.

This legislation also is supported by several New York State organizations, including the City Council of New York, the New York City Patrolmen's Benevolent Association, the Tri-District Federal Probation Officers Association (NY), the New York Police and Fire Retiree Association, Inc. (Yonkers, NY), the Police Conference of New York, Inc., the Syracuse Police Department, and the Metropolitan Police Conference of New York State, Inc.

Armor-piercing handgun ammunition is of no use to hunters and sportsmen. Standard ammunition can be used to achieve the same objectives, and in a safer and more certain fashion. Animals shot with armor-piercing projectiles die slow deaths, usually from loss of blood, because the bullets typically pass through the body cavity without fragmenting on impact. Indeed, for this reason, many States explicitly forbid the use of such bullets for shooting game.

The legislation Congressman Biaggi and I proposed in the 97th Congress, and introduced in this Congress as S. 555 and H.R. 953, would direct the Department of the Treasury to determine which bullets, when fired from a handgun with a barrel 5 inches or less in length, are capable of penetrating the equivalent of 18 layers of Kevlar, the standard composition of most police vests. The Department then would publish its findings in the Federal Register, and 60 days after publication those bullets so identified would be banned from further manufacture, import, sale, and criminal use - except when authorized by the Secretary of the Treasury for public safety or national security purposes. The Secretary of Treasury could allow domestic manufacturers to continue testing armor-piercing bullets, and authorize the sale of such bullets to local law enforcement agencies or foreign governments.

A licensed importer, manufacturer, or dealer who violated this act would be subject to a fine of not more than $10,000, imprisonment for not more than 10 years, and the revocation of his Federal license. In addition, a person using or carrying an illegal bullet during the commission of a Federal felony would be subject to a mandatory sentence of not less than 1 year nor more than 10 years for a first offense, and not less than 2 years nor more than 25 years for a second or subsequent offense.

The stipulation in the testing procedures, to focus on bullets for handguns with a barrel length of five inches or less, was not arbitrary. In 1981, Joseph Albright of Cox Newspapers studied data on some 14,268 handguns confiscated from criminals. His study, widely acknowledged as the most comprehensive of its kind, revealed,

> Two out of every three handguns used in murders, rapes, robberies, and muggings were ...handguns barrels protruding no more than three inches beyond the cylinder.

Mr. Albright also found that the 15 handguns predominantly used by criminals all had barrel lengths of four inches or less.

The vest thickness prescribed in the testing procedures of my legislation also was carefully chosen. The vast majority of police vests worn today consists of 18 layers of kevlar. This is the same vest thickness used in the FBI's 1982 demonstration project, a study which showed these vests capable of stopping any conventional handgun bullets (including the .44 magnum, the most powerful standard handgun ammunition), but unable to defeat eight types of specially-designed armor-piercing ammunition.

Let me make clear what this bill does not do. Our legislation would not limit the availability of standard rifle ammuntion with armor-piercing capability. We recognize that soft body armor is not intended to stop high-powered rifle cartridges. Time and again, Congressman Biaggi and I have stressed that only bullets capable of penetrating body armor and designed to be fired from a handgun would be banned; rifle ammunition would not be covered. To further clarify this intent in our legislation, both Congressman Biaggi and I would favor an amendment explicitly to exclude standard rifle ammunition.

In addition, our bill would not limit the availability of conventional handgun ammunition to law-abiding citizens for self-defense and sporting purposes. The legislation has been drafted so as to apply only to the narrow class of bullets capable of penetrating bullet-resistant armor when fired from a handgun. Gun owners who already have armor-piercing handgun ammunition in their possession would not be subject to criminal sanctions. Our sole objective is to keep those handgun bullets specially designed to pierce soft body armor out of the hands of criminals. Nothing more is intended; nothing less will suffice.

On March 7, 1984, the Senate Judiciary Subcommittee on Criminal Law conducted an informative hearing on this legislation. Four important issues were discussed at this hearing: The pressing need to ban "cop killer" bullets; the best approach to defining "armor-piercing handgun ammunition"; the narrow scope of this bill's ban on criminal possession of such ammunition; and the unequivocal support of this legislation from every major police organization in the country. As I have already detailed the need for this legislation, I would now like to focus on the other three issues.

A number of individuals and organizations are concerned that our legislation might restrict the availability of certain commonly used handgun and rifle cartridges. I share their interest in preserving legitimate shooting sports, and I wish to assure this Subcommittee that it is not the intent of either Congressman

Biaggi or myself to ban commonly used, nonarmor-piercing ammunition. I stated as much at the hearing, when I mentioned my willingness to accept an amendment to exclude explicitly all standard rifle ammunition from the purview of the bill. I also stated my willingness to work with the Department of the Treasury, the Department of Justice, and all other interested groups to develop an effective definition, acceptable both to the police and to sportsmen.

At the hearing, Mr. Robert Powis, a Deputy Assistant Secretary in the Treasury Department, reported that he had reached voluntary agreements with manufacturers and importers to halt the availability of armor-piercing handgun ammunition to the public. The very existence of such agreements demonstrates that a definition of armor-piercing ammunition can be achieved. I am disappointed, however, that Mr. Powis apparently objects to stronger and more effective action beyond these voluntary agreements. Mr. Powis has not demonstrated that all, or even most, manufacturers and importers have agreed to this ban. Further, no mechanism exists to monitor compliance with these agreements, and the voluntary nature of the agreement precludes any enforcement. Finally, sales by gun shop owners are permitted under the agreement; therefore, criminals still have access to this ammunition.

The Department of Justice enunciated its support for "the thrust" of our legislation, while expressing some reservations with regard to the definition. Deputy Associate Attorney General Jay B. Stephens told the Senate Subcommittee that the Department of Justice has been working since early 1982 to fashion a workable definition of armor-piercing ammunition. He made some excellent suggestions regarding testing procedures and expressed his willingness to cooperate in this endeavor with the supporters of H.R. 953/S.555. It is my understanding that the Department of Justice may soon advocate a definition based on the design of bullets, rather than their performance. I am pleased at the effort devoted to this important project by the Department of Justice, and I am confident that they will continue their work.

In addition, Detective Richard Janelli of the Nassau County Police Department has been working over the last two months with other law enforcement officials and the Grumman Corporation, to develop a definition based on the design characteristics of the bullet. With the efforts of Detective Janelli, Grumman, and the Department of Justice, I am optimistic that we will soon develop a legislative definition of armor-piercing handgun ammunition.

The March 7 hearing also provided a brief and, I regret, insufficient discussion of the bill's ban on the criminal use of armor-piercing ammunition. Our legislation explicitly prohibits the possession and use of this bullet in the commission of a crime. This clause is similar to proposals supported by President Reagan, the National Rifle Association, and the United States Senate, which approved a bill containing such a provision on February 2, 1984, by a vote of 91-1. At the March 7 hearing, I testified,

> Gun owners who already have armor-piercing handgun ammunition in their possessions would not be subject to criminal sanctions.

Penalties only apply to individuals who use these bullets while committing a crime.

Unfortunately, the National Rifle Association either failed to hear my testimony, neglected to read the transcript, or simply ignored what I said. In any event, the NRA has not read carefully the legislation. In a letter dated April 18, 1984, the NRA told its members that this legislation "could make your ammunition contraband."

That will not happen under this legislation, unless the user of that ammunition commits a crime. The NRA then endorsed legislation (H.R. 3796) to ban the criminal use of armor-piercing ammunition; essentially, the NRA endorsed the same type of provisions concerning the possession or use of armor-piercing ammunition as contained in the Moynihan/Biaggi legislation.

The hearing also established the unanimous support of the Nation's major law enforcement organizations for this legislation. At the hearing, either written or spoken testimony was presented by the National Fraternal Order of Police, the International Brotherhood of Police Officers, the National Association of Police Officers, and the International Association of Chiefs of Police (IACP). During the March 7 hearing, the National Rifle Association intimated that the IACP had concerns about this legislation and therefore did not support it. Apparently, the NRA was unaware of the testimony delivered at the March 7 hearing by the International Association of Chiefs of Police:

> Two years ago, Norman Darwick, the Executive Director of IACP, appeared before the House Subcommittee on Crime to testify in support of legislation similar to that before this Subcommittee. Much of what he said then is repeated here. However, since that time the position of the Association has grown stronger.

> At a meeting of the IACP Board of Officers held on February 18, 1984, the Board voted unanimously to support S. 555 and its companion bill in the House, H.R. 953.

In a letter of April 16, 1984, IACP joined three other organizations (the National Sheriff's Association, the National Organization for Black Law Enforcement Executives, and the Police Executive Research Forum) in expressing full support for S. 555/H.R. 953:

> Federal legislation to ban armor-piercing bullets must be passed.

I hope that Congress is listening to the pleas of our country's police officers.

While the Congress has yet to act upon this legislation, I am encouraged by the response our bill has elicited from State legislatures. Since we first offered our legislation, sixteen States (Alabama, California, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Nevada, New Jersey, North Carolina, Oklahoma, Rhode Island, South Carolina, and Texas) and the District of Columbia have outlawed cop-killer bullets. Five more States (Minnesota, Montana, New Hampshire, Tennessee, and Virginia) have increased existing penalties for criminal possession or use of such bullets, and six others (Alaska, Massachusetts, Michigan, New York, Ohio, and Pennsylvania) currently have legislation pending. The Administration also included, in the crime package approved by the Senate on February 2, 1984, criminal sanctions for the use of armor-piercing ammunition. In addition, Winchester-Western, one of the Nation's largest ammunition manufacturers, has stopped producing armor-piercing bullets; and the DuPont Company has stopped selling Teflon to manufacturers of the KTW bullet, after determining the ammunition was being distributed to the general public.

Unfortunately, these efforts cannot provide law enforcement officers the protection they so deserve. We must do everything possible at the Federal level to prevent the criminal use of armor-piercing handgun ammunition. Certainly, as Mr. Edward Murphy, Legislative Counsel to the International Brotherhood of Police Officers, pointed out in his testimony before this Subcommittee in 1982, there is ample precedent for Federal legislation to ban this type of lethal ammunition:

> The Congress has adopted a policy of restricting the availability and use of certain types of firearms and weapons in order to assist police officers in fighting crime. Congress has outlawed the sale of the short-barreled rifle, the sawed-off shotgun, machine guns, and classes of weapons known as "destructive devices." Congress has provided a stiff deterrent to the sale or possession of such weapons as the means of controlling their availability. This method, while not completely effective, has at least provided officers with an instrument to combat their availability and use.

Police officers are pleading for this additional protection. How long can we ignore these pleas?

As sentiment against cop-killer bullets continues to build across the country, it is incumbent on the U.S. Congress to address the issue.

Mr. **Hughes**. Thank you very much, Senator, for an excellent statement. I have no questions. In fact, I observed your appearance on Good Morning, America, and I thought you handled yourself extremely well. Thank you so much, and I look forward to working with you in the coming days to develop a legislative package as best we can, with or without the technical assistance that we seek.

Does anybody have any questions of the Senator? The gentleman from Florida?

Mr. **Smith**. I don't have any questions, Mr. Chairman. I would just like to commend the Senator for his statement; just one thing is interesting to note in the letter, the professor states that killing deer and killing cops are not comparable.

As a matter of fact, Senator, and I think you are aware of this, any decent hunter who hunts for the sport of the hunt and cares about animals, which many hunters do, would never use an armor-piercing bullet on a deer because that projectile goes right through the deer. It generally does not kill the deer, and inflicts great pain and injury, but not death. So, any self-respecting hunter who cares about animals would not use this ammunition for hunting either.

Senator **Moynihan**. Representative Smith, may I just take the opportunity to agree with you most emphatically, and this is important. I live in Delaware County, NY, where more deer are shot each year than in any other county and many States. No deer hunter ever would use such a round. We are talking about handguns, anyway—but a rifle round of this manufacture or this design, would never be used by a deer hunter. You would hit your deer, and the deer would die 12 hours later and 20 miles away, of bleeding, and you would never see him again.

It is just not an issue of sport, it is not an issue of rifles. And to have it made such is a misrepresentation that verges on the criminal, I do thank you for the opportunity to testify in front of your honorable committee, sir.

Mr. **Smith**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Hughes**. Thank you, Senator, very much.

Welcome, Mr. Biaggi.

Mr. **Biaggi**. Thank you very much, Mr. Chairman, for the opportunity to address your subcommittee once again.

With reference to the opening remarks, Mr. Chairman, there seems to be a sense of frustration manifested in them. I can understand that because we have been involved with this issue for a considerably long period.

I thought I had reason to believe at the outset that there would be more forthcoming from the administration. However, I must regrettably restate that the administration has virtually sabotaged this legislation by bureaucratic double talk and internal squabbling. Clearly we are down to a definitional dilemma, but I sincerely believe that definition may be just a ruse by the administration to avoid meeting the issue head-on and providing the solution.

I am not saying that providing a definition isn't important; clearly, it is. But I think it is one in which they can legitimately hang their hat on, and happily so, to avoid dealing with the problem sincerely.

I know this seems like another road show. But I think it is important, for the record at least, to repeat some of the important things that we have said on other occasions. What are we talking about? We are talking about armor-piercing bullets, those of domestic and foreign origin.

[Demonstration.]

Mr. Biaggi. We have here again for demonstration, the kind of a bulletproof vest that is used by the police officer, and that is penetrated, both panels along with a materiel equivalent to human body substance and several telephone books by armor-piercing handgun ammunition. That is just one illustration.

[Demonstration.]

Mr. Biaggi. We also have a .357 Magnum KTW bullet, that it went through 44 layers of Kevlar. Right here, this is the 44 layers of Kevlar the .357 KTW penetrated, and then it went through 4-inch maple wood. Now, here is the bullet, still here.

I point this out, Mr. Chairman, to dramatically impress you, although I don't think it is necessary, but because of the dilatory nature of this whole undertaking it is important that we refocus, re-emphasize, just what we are talking about.

[Demonstration.]

Mr. Biaggi. Here we have a number of cop killer bullets. Several are no longer manufactured by American companies that had been making them like Remington and Winchester. In fact, with Winchester, we spoke with them, and they were not aware of the problem. And when we posed the problem to them, they said they would discontinue the production.

[Demonstration.]

Mr. Biaggi. Now we have some from West Germany, armor-piercing, right here, and several, four domestic armor-piercing bullets, and we have a new French armor-piercing bullet. This, perhaps, is more awesome than a KTW. You will notice it is not very large, but it has a very odd configuration.

Mr. Hughes. What is the caliber of that?

Mr. Biaggi. It is a 9 mm.

Now, I am going to show you some promotional material, armor-piercing bullet promotional material in various magazines.

[Material shown.]

Mr. Biaggi. One piece of promotional material talks about this new French bullet—we see it here. And there is a very specific reason why I am pointing this out. This is Guns and Ammo, May 8, 1983, it talks about a West German armor-piercing bullet. Guns and Ammo again, the Plain Dealer, Law and Order magazine; KTW: Metal Piercing Bullet; Gun World: Metal Piercing Bullet; Sunday Journal: To Develop a Super Bullet; Sports & Field: Bullets Heavier Than Lead; again, Gun World, 1970; Gun magazine, 1973, KTW; KTW, Ammunition; Law and Order magazine, 1973; Gun World in 1975; Law and Order, January 1977; Gun World in 1978.

The reason I make reference to the promotional materials is that there are some opponents that suggest, Mr. Chairman, and it is suggested in hearings and in debates, that by my introducing the legislation and focusing attention on the existence of these bullets and the impact they have, and the problem that has since developed—we advertise, we educate the criminal element.

If anyone is responsible for educating the criminal element it is not me, and I don't think even this promotional material does that—because I contend, as a result of 23 years of experience in the streets of the city of New York, the criminal element ofttimes knows what is out there to be utilized in the pursuits of their unlawful activities, quicker than most police officers. And that is a practical observation.

But put that aside. The argument they offer has no basis in fact, and I offer these promotional materials to sustain that. And I offer these other exhibits to once again illustrate what we are talking about. Today, I am not here to rehash the old arguments against these bullets, Mr. Chairman. With the help of your subcommittee, which held the first congressional hearings on this issue more than two years ago, the case against these bullets has been made.

I am here to reiterate in the strongest terms possible the need for passage of legislation to outlaw cop killer bullets.

I would like to emphasize and place special focus on what the gentleman from Florida, Mr. Shaw, stated. There is nothing here that encroaches upon the right of individuals to possess arms. Clearly, nothing. It is a strawman that has been established by the NRA, pure and simple. They need someone to rally around their flag. They need an issue, a cause, in which they get their membership involved. It is fraudulent. Their position is fraudulent. It is disgraceful. And they use all of their friends in every walk of life to support their position. And their friends are everywhere, Mr. Chairman.

As we celebrate National Police Week, there is no better way to demonstrate our support and concern for our Nation's law enforcement community, than favorably acting on this critical police protection issue.

I view today's hearings as a springboard for the achievement of that goal by the end of this year.

A brief chronology of events leading to this hearing today reveals that I was first informed about this problem in 1979 by the New York City Patrolmen's Benevolent Association.

I conducted an extensive investigation and first authored a bill dealing with the issue of cop killer bullets in 1980. H.R. 953, a bill to ban the future manufacture, importation and sale of armor-piercing handgun ammunition, as well as establishing enhanced penalties for criminals who use such ammunition, was introduced in January 1983. H.R. 953 currently has 184 cosponsors and an identical Senate measure, S. 555, is pending in the Senate.

Interestingly enough, the NRA is at work attempting to persuade members to remove themselves as cosponsors, with all types of spurious allegations, none dealing with facts—facts heard here, facts that can be confirmed and pursued. They say it is an insidious way, or it is a way of encroaching upon the right to bear arms. Clearly, that is not my intent, never has been, and I don't support the position of those who are for gun control. I think people have a right to bear arms. And many people who cosponsor this legislation support the same position I do in this regard; and others take the opposite position. The issue is very, very narrow. Do you prefer to prevent police deaths, or would you rather participate in the ceremonies after their deaths?

In addition to this overwhelming congressional support, this legislative effort has been endorsed by major police organizations across the country, as well as by more than 150 editorial boards throughout the Nation. Ten States and a number of localities have already outlawed these awesome projectiles. In fact, just last month my home city of New York unanimously approved a resolution endorsing H.R. 953.

With your permission, Mr. Chairman, I wish to insert the full text of the New York City Council's resolution of support in the hearing record.

Mr. HUGHES. Without objection, so ordered.

[The resolution follows:]

THE COUNCIL

November 29, 1983

Amended Res. No. 664-A

Resolution Calling Upon the U.S. Congress To Enact Bills Banning the Manufacture, Import and Sale of Armor-Piercing Bullets and Calling Upon the City Council to HOld Hearings on Banning the Sale and Possession of KTW and Similar Bullets in New YOrk City.

By Council Members Michels and Samuel; also Council Members Dryfoos, Friedlander, Gritzer, Maloney, Messinger, Alter, Albanese, Crispino, Dear, Eisland, Ferrer, Foster, Gerges, Leffler, Manton and O'Donovan—

Whereas, New York City police officers have been equipped in recent years with protective vests; and

Whereas, this body armor was designed to be bulletproof and has saved the lives of many police officers; and

Whereas, criminal elements have been utilizing KTW and other types of bullet capable of piercing these vests; and

Whereas, these bullets defeat the best means of protection for members of the New York Police Department; and

Whereas, there is no legitimate recreational use for these bullets since they tend to wound rather than kill hunting game; and

Whereas, these bullets are not used by police officers because they have limited stopping power and have a greater tendency to ricochet and injure innocent bystanders; and

Whereas, 18 states have banned armor-piercing bullets; and

Whereas, several localities, including Brookhaven, N.Y., have also responded to this threat by banning this anti-personnel ammunition; and

Whereas, Rep. Mario Biaggi has introduced a bill, H.R. 953, sponsored by over 150 Members of Congress, which would outlaw the manufacture, import and sale of these bullets, as well as impose stiffer penalties for felons who have used these bullets in the commission of a crime; and

Whereas, Sen. Daniel Patrick Moynihan has introduced a companion bill, S. 555; and

Whereas, a similar bill (Intro. 253) banning armor-piercing bullets within the City of New York has been introduced in the City Council; therefore, be it

Resolved, that the Council of the City of New York calls upon the United States Congress to expeditiously act on the passage of H.R. 953/S. 555; and be it further

Resolved, that in the meantime the Council of the City of New York will hold hearings on Intro. 253 to bring attention to the danger posed by these bullets; and be it yet further

Resolved, that copies of this resolution be sent to Rep. William J. Hughes, chairman of the House Subcommittee on Crime, to Sen. Strom Thurmond, chairman of the Senate Judiciary Committee, to Sens. Daniel Patrick Moynihan and Alfonse D'Amato and to the entire Congressional delegation from New York City.

Adopted.

Office of the City Clerk,
The City of New York, } **ss.:**

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on APRIL 26, 1984, on file in this office.

City Clerk, Clerk of the Council

Mr. Biaggi. I might also add, Mr. Chairman, they have a resolution pending that would ban the manufacture of these bullets in the city of New York.

Simply put, Mr. Chairman, there is more than sufficient incentive for a Federal ban against cop killer bullets. And they are properly called cop killer bullets because there is no other purpose for them.

The real and potential threats armor-piercing handgun ammunition pose to police officers have been clearly documented. And with your permission, Mr. Chairman, I wish to insert in the hearing record testimony I recently presented before a Senate subcommittee dealing with the strong case against cop killer bullets.

[The document follows:]

NEWS

FROM CONGRESSMAN

MARIO BIAGGI

19TH CONGRESSIONAL DISTRICT, N.Y. BRONX AND YONKERS

MARCH 7, 1984

TESTIMONY ON ARMOR-PIERCING "COP KILLER" BULLETS PRESENTED BEFORE THE SENATE SUBCOMMITTEE ON CRIMINAL LAW BY U.S. REP. MARIO BIAGGI OF NEW YORK

Mr. Chairman, it was nearly four years ago that I first authored legislation to address the problem of armor-piercing "cop killer" bullets. I did so at the request of the law enforcement community. They came to me because I served 23 years as a New York City police officer . . . because I was wounded 10 times in the line of duty . . . because I fully recognize the need for better police protection. With good reason, they were deeply concerned that the public was being allowed easy access to a special type of handgun ammunition that could penetrate their soft body armor.

It is unthinkable to me that such a critical problem can be talked about by so many and acted on by so few. I appreciate your interest, Mr. Chairman and am hopeful that today's hearing will allow us to overcome the obstacles that have stalled this vital police protection measure for so very long.

Significantly, armor-piercing "cop killer" bullets are not used for legitimate purposes. In fact, the Bureau of Alcohol, Tobacco and Firearms informed me in a report dated July 22, 1983, that "most State game laws . . . preclude the legitimate use of armor-piercing bullets." However, these bullets have been used by criminals to shoot and kill police officers. The most alarming fact, though, is the nonexistence of any federal law limiting the manufacture, sale or importation of these awesome projectiles.

Currently, more than half of our nation's 528,000 law enforcement officers wear bullet resistant body armor on a daily basis. The U.S. Justice Department reports that more than 400 police lives have been saved by these vests. In fact, during the 10 years (1974-1983) that bulletproof vests have been used, handgun-related police deaths have declined by 43 percent (93 in 1974 to 53 in 1983).

Our newspapers tell the story. For instance, on December 1, 1982, Washington Post readers were told in graphic detail just how effective bulletproof vests can be:

> "William Johnson struggled for the .357 magnum revolver held only inches from his chest. He watched the gun as it fired seconds later. He saw his shirt tear as the bullet struck. He felt its crushing force. And because the 62-year-old Alexandria deputy sheriff was wearing a bulletproof vest, he was alive yesterday to help convict the man accused of trying to kill him.".

Soft body armor, first started being used by law enforcement officers around 1974. The vests became popular with police officers because they are comfortable--weighing only about three pounds--and they can stop the conventional handgun ammunition used by most criminals. The most common bulletproof vest used by police costs about $150 and includes 18 layers of Kevlar--a bullet resistant fiber produced by Du Pont. Although not designed to stop rifle ammunition, the 18-layer Kevlar vest will stop most handgun bullets, including the powerful .44 magnum. As a result, more and more police are looking to soft body armor for protection. Just last year, in fact, I joined in the effort to raise $624,000 to furnish more than 3,000 District of Columbia police officers with a bulletproof best.

Yet, despite its ability to stop conventional handgun ammunition, soft body armor is totally useless against a small class of handgun bullets specially made for maximum penetration. For example, the Teflon-coated KTW bullet, which is generally regarded as the most powerful of these armor-piercing bullets, can penetrate the equivalent of four bulletproof vests (72 layers of Kevlar) in a single shot.

Significantly different from other handgun ammunition, the armor-piercing handgun bullets are made of extremely hard metals--usually steel or brass-which allow the bullets to retain their shape on impact. In addition, they travel at exceptionally high speeds. The more conventional handgun bullets are slower and they flatten out on impact due to their hollow point and/or soft metal composition, most notably lead. Contrary to a popular misperception, the apple green Teflon coating, which is unique to the KTW bullet, is not the key ingredient to armor-piercing ammunition. In fact, it is responsible for no more than about 10 to 20 percent added penetration.

My initial research identified eight different manufacturers, both foreign and domestic, that made a handgun cartridge capable of penetrating the most popular police vest. The current availability of armor-piercing handgun ammunition is difficult to assess in precise terms. However, we do know they have been easily obtained by civilians through local gun shops, and we know that criminals have used them to shoot and kill police officers.

For example, on February 20, 1976, Florida Highway Patrolman Phillip A. Black and a visiting Canadian police officer, Donald R. Irwin, were shot and killed by KTW armor-piercing ammunition in Broward County, Florida. Their murderers were arrested shortly after the shooting armed with several boxes of the KTW bullets. Interestingly, the manufacturers of KTW bullets claim their ammunition is made and sold "For Police Use Only," and is not available to the public.

More recently, on the night of September 13, 1983, David Schwartz was arrested by Nassau County (NY) police on bank robbery charges. During a search of his home, police found a stockpile of weapons and ammunition, including 32 armor-piercing handgun cartridges.

A report prepared by the U.S. Bureau of Alcohol, Tobacco, and Firearms states that "approximately 30 million rounds" of a Czechoslovakian 9mm handgun bullet, that will easily penetrate the vests worn by police, were imported during the 1970's for commercial sale. Recent reports from law enforcement officials in my home state of New York indicate that "cop killer" bullets are still being sold in large quantities at local gun shops.

Beyond these facts, however, it is virtually impossible for anyone to determine the precise availability and use of these so-called "cop killer" bullets because national crime statistics do not show whether a bullet used in a crime is armor-piercing or otherwise. Commonsense, however, tells us that as the number of police officers wearing bullet resistant vests continues to grow, criminals have more reason to seek and use armor-piercing handgun ammunition.

These alarming facts have led individual police departments and major police organizations across the country to endorse a ban on armor-piercing "cop killer" bullets. These police organizations include the International Brotherhood of Police Officers, the National Association of Police Organizations, and the International Union of Police Associations.

Public support has been equally overwhelming, as demonstrated by the fact that over 140 editorial boards from every region of the nation have called for a federal ban on armor-piercing handgun ammunition. Further, H.R. 953 has 184 House cosponsors and S. 555 has 17 Senate cosponsors.

Further, 10 states, as well as a number of localities, have enacted laws banning armor-piercing handgun bullets. They include, Alabama, California, Florida, Illinois, Indiana, Kansas, Maine, Oklahoma, Rhode Island and Texas.

Even the manufacturers agree that these awesome projectiles should not be available to the public. In fact, as stated previously, the manufacturers of the notorious KTW armor-piercing bullet have labeled their product for "Police Use Only."

Raising serious questions about their fierce opposition to a ban on "cop killer" bullets, the Executive Director of the NRA's Institute for Legislative Action, Warren Cassidy, has written that "clearly, ammunition designed to cut through armor is not used by hunters or competitive shooters. The ammunition is for specialized law enforcement and military uses only. The NRA understands this." (The Firing Line, August 15, 1983). One must wonder, then, why the NRA does not understand the need for a ban on armor-piercing handgun ammunition, except for police or military use.

"How ironic," I thought, after learning that the armor-piercing "cop killer" bullets the police community feared were made originally to help police. Adding to the irony was the fact that the law enforcement community--for whom the bullets were intended--considered the armor-piercing handgun ammunition too dangerous even for police use. In fact, the International Association of Chiefs of Police, Inc., commented in a letter to me in January 1982 that "we can find no legitimate use for (armor-piercing) ammunition, either in or out of law enforcement. The manufacturer's position that it is 'for police use only' is ludicrous."

The IACP's claim is further substantiated by Remington Arms and Winchester, two of our nation's largest ammunition manufacturers. Remington began making a special metal penetrating load for police use in 1938. However, it was discontinued in 1965. According to Du Pont, Remington's parent company, "These loads were originally intended for use by police officers for penetrating metal, particularly fleeing cars. They were discontinued long before the advent of modern soft body armor. There does not appear to be sufficient demand for such loads for law enforcement purposes to justify their current production."

Winchester began making a metal-piercing handgun cartridge in 1937. However, according to [illegible] parent company, Olin Corporation, "The revelation that some pistol cartridges have the ability to penetrate body armor caused Winchester to review their product line. Although the .357 magnum and .38 special metal-piercing cartridges were added to our product line in 1937 as a result of police requests, due to low current interest by police departments. . . on February 22, (1982) the President of Winchester, H.E. Blaine, issued the directive that the metal-piercing cartridges no longer be manufactured."

With these facts in mind, it was certainly no surprise, then, to learn that both the Treasury and Justice Departments shared my concern about this problem. As far back as September 1979, the Treasury Department informed me that "we share your concern and that of all law enforcement agencies with the availability of (the KTW) and other ammunition capable of going through the body armor used by officers. We sincerely regret that law officers have lost their lives through misuse of this ammunition." In February of 1982, the Treasury Department reiterated their concern in a letter to me stating that "the Department shares your concern that armor-piercing bullets pose a danger to law enforcement officers."

In testimony nearly two years ago before the House Subcommittee on Crime, then-Associate Attorney General Rudolph W. Giuliani was even more specific in stating Justice Department concerns. He stated, "We see no legitimate reason for private use or possession of handgun bullets, such as the KTW, that are designed to penetrate armor."

Acting with what appeared to be consensus support from the police community, the Administration, and even the manufacturers of armor-piercing handgun ammunition, I first authored a bill in February 1982 to ban these so-called "cop killer" bullets, except when needed for police or military use (my earlier bill had merely called for a study). An identical bill, H.R. 953, was reintroduced this Congress, and a companion bill, S. 555, has also been introduced in the Senate by my distinguished colleague from New York, Pat Moynihan.

Contrary to what some critics might want to believe, H.R. 953/S. 555 is not some deviously contrived gun control measure aimed at infringing on the legitimate use of firearms or ammunition--a right which I fully support. Instead, it uses an approach based largely on commonsense to outlaw a very small class of handgun bullets that benefit only one element of our society--the criminal element.

Specifically, this legislation would direct our federal firearms regulatory agency, the Department of Treasury, to determine which handgun cartridges can penetrate the equivalent of an 18-layer Kevlar vest (the most popular police vest) when fired out of a gun barrel five inches or less in length.

Once identified as armor-piercing, those handgun cartridges would be banned from future manufacture, importation, or sale, except when needed for police or military use. The bill would also provide mandatory penalties for any person convicted of using armor-piercing handgun bullets in a crime.

The penalties imposed by this measure are consistent with current firearms violation laws. Under the provisions of this Act, any person who makes, imports, or sells one of these restricted bullets would be subject to a fine of not more than $10,000, imprisonment for not more than 10 years, and revocation of their Federal license.

A person using or carrying a restricted bullet during the commission of a felony would be subject to a mandatory, minimum prison sentence of not less than one year nor more than 10 years for the first offense, and not less than two years nor more than 25 years for the second or subsequent offense. This mandatory sentence would be in addition to any penalty imposed for the original crime.

Let me emphasize that this bill is not in any way intended to penalize those persons who possess this type of ammunition for legitimate purposes, such as gun collectors. My sole intent is to keep these bullets away from criminals. While the future manufacture, importation, or sale would be banned, this Act would not be retroactive in scope.

The problem has been clearly defined and a reasonable solution has been proposed by myself and Sen. Moynihan. Yet, the Congress has failed to enact a federal ban against armor-piercing "cop killer" bullets. Why? There are two major reasons: first, the National Rifle Association strongly opposes a ban on armor-piercing handgun ammunition; second, the Reagan Administration, while seemingly not opposed to the idea, has offfered very little meaningful support for such a ban.

The gun lobby's opposition to a ban on armor-piercing handgun ammunition is nothing but a knee-jerk reaction based more on paranoia than on any semblance of reason. Consider, for example, an article written by Evan Marshall for the Gun Owners of America, which stated, "The National Rifle Association has wisely recognized that the "Killer Bullet" controversy represents a gun control issue. If the anti-gun people can begin to restrict ammunition, they can get gun control through the back door.

Normally, I would not waste my time to respond to such a ludicrous and wreckless statement. Yet, because this paranoic mentality has placed the lives of our police officers in grave jeopardy, I cannot allow such warped reasoning to go unchallenged. Let me first reemphasize that the bullets my bill seeks to ban are not used for legitimate purposes. Secondly, I want to once again state my support of the right to bear firearms for legitimate purposes. Simply stated, the issue my bill seeks to address is police protection, not gun control.

As a veteran police officer, I deeply resent the NRA's attempts to use their close ties to the law enforcement community to excuse their irresponsible and short-sighted position on this vital police protection issue. Simply put, the NRA has revealed that their long stated commitment to police safety can be compromised, even when the rights of legitimate gun users are not threatened.

A brief review of the facts shows that when I first authored legislation to ban armor-piercing handgun ammunition, the NRA made blanket statements of opposition, like "there is no such thing as a good or bad bullet." They were sharply criticized by the police community for such an outrageous position, but rather than changing their stance they merely restructured their words. There are technical problems with the legislation, they said.

I remain convinced that my legislation is sound, although I have long indicated my willingness to make any technical changes that the NRA or anyone else can prove are necessary. The NRA has chosen to ignore this challenge and, instead, continues to attack my effort by making totally inaccurate and misleading statements. For instance, they recently attempted to stir the emotions of their membership by saying that my bill "would ban 90 percent of high powered rifle cartridges." In fact, my bill would only ban armor-piercing bullets made originally for "handgun" use. There is no mention anywhere in the bill about banning rifle ammunition, and there is certainly no such intent.

In a letter to law enforcement officials, the NRA makes the incredible statement thay my legislation "will cause the people to think something is being done to help our police officers, when, in fact, nothing is being done to protect them or to control those who attack them." The merits of my bill as a police protection measure are obvious--handgun bullets that can penetrate the soft body armor worn by police would be far more difficult for criminals to obtain.

The NRA apparently does not understand how that might help save police lives. Instead, they argue that "the only workable approach is to impose, with vigor and with justice, mandatory penalties for the use or the possession of 'armor-piercing' ammunition in the commission of violent crime. Strong words. I support tougher penalties, too, and have included such a provision in my bill. However, is the NRA so naive that it believes a criminal intent on committing a violent act would think twice if given the chance to arm himself with high-powered "cop killer" bullets?

Once again, I challenge the NRA to stop waging their war of words from the sidelines, and do their battle for police protection in the trenches, with those of us who are truly committed to saving police lives.

For nearly two years, the Justice and Treasury Departments have offered assurances that they share my deep concern about the serious threat armor-piercing ammunition poses to our law enforcement community. They have given assurance that they would work with me in developing an appropriate legislative remedy. Yet, they refuse to endorse my bill to ban armor-piercing handgun bullets, and they have failed to develop alternative legislation of their own. Simply put, this Administration, which has long prided itself on a strong law and order stance, has used bureaucratic double talk to effectively stonewall the most important police protection initiative in recent years--a ban on "cop killer" bullets.

It appears that at least part of the reason for these mixed signals we are getting from the Administration stems from a bureaucratic squabble between the Departments of Justice and Treasury. While both departments have pledged their willingness to work toward a legislative ban against armor-piercing handgun bullets, only the Justice Department appears to have followed through on that pledge, and their constructive efforts have met continued resistance from Treasury officials.

Consider, for example, that when testifying on March 30, 1982, before the House Subcommittee on Crime, Deputy Assistant Treasury Secretary Robert E. Powis, stated, "We are continuing to explore with the Justice Department other legislative alternatives. We will, of course, report to the committee, if and when we are better able to deal with this issue by means of legislation." Since that statement, as best as I have been able to determine, the Treasury Department has not conducted any further studies or attempted in any other way to develop legislation aimed at restricting the availability of armor-piercing handgun ammunition.

The Justice Department, while far from expeditious in their handling of this serious problem, has at least lived up to the spirit of their pledge of May 12, 1982, "to develop a workable definition of (armor-piercing) bullets." In fact, in a letter to me dated January 31, 1984, Assistant Attorney General Robert McConnell stated, "The Department of Justice has just recently forwarded a draft armor-piercing bullet package to the Office of Management and Budget for review within the Administration. I must caution . . . that this proposal is still subject to review (particularly by the Departments of Treasury and Commerce which have substantial expertise concerning firearms and body armor). Therefore, it may yet be found technically deficient in some respect. Nevertheless I remain optimistic that we have now resolved the definitional problems which have plagued this legislation in the past and that we will have a proposal for submission to the Congress in the near future."

The fact that this proposal has not been formally proposed to Congress prior to today's hearing leads me to reach a very distressing conclusion--the Treasury Department has blocked the Justice proposal, which was developed after months of careful study and deliberation. If that conclusion is accurate, the Congress in all likelihood will be left to act on the "cop killer" bullet issue without an official Administration endorsement. I hope I am proven wrong on this assessment.

Although the Justice Department proposal was not made available for my review, I have been informed by Justice officials that its general thrust is very similar to the Biaggi/Moynihan legislation. For example, it supposedly contains a ban on armor-piercing handgun ammunition based on a standard of penetration, and it would provide enhanced mandatory penalties for criminals who use such ammunition in a crime. The major differences are that the Justice proposal would require testing to be conducted by the industry, rather than by the Treasury Department, and the standard of penetration would consist of a certain number of aluminum plates, rather than the 18 layers of Kevlar. For the record, I would have no problem with either change. In fact, I find the Justice approach rather appealing, and am hopeful the Congress will have an opportunity to give it the prompt and careful consideration it deserves.

While state laws and voluntary restrictions are encouraging, they are far from satisfactory. Only 10 states have restricted the availability of these high powered projectiles and the laws that do exist vary from one state to the next. Voluntary efforts are unenforceable and have already proven unsuccessful in keeping KTW bullets out of the hands of "cop killers." The president of one U.S. company that manufactures armor-piercing handgun ammunition has been quoted as saying, "It's not up to me to regulate who gets the bullets." An importer of the "cop killer" bullets has attempted to shift the blame to the vest manufacturers, saying, "(the armor-piercing bullets') penetration speaks less of bullet design than of the inherent limitations of the vest."

It should be noted that Du Pont, the maker of Kevlar, has informed me that "at present . . . there are no strong leads on a new fiber which will make a vest capable of defeating the KTW or other armor-piercing handgun bullets at a weight low enough for routine wear." Suffice it to say that without a federal ban on armor-piercing handgun ammunition, there will be nothing to stop the money hungry businessman from making an easy dollar at the risk of police lives.

Whether it is the Biaggi/Moynihan legislation, the Justice Department proposal, or some other alternative is really quite insignificant. The simple fact is, no matter what the legislative vehicle, we cannot afford to wait any longer to impose a federal ban on armor-piercing "cop killer" bullets.

Simply put, cop killers don't wait for others to act, so why should we? We should be trying to prevent police deaths instead of responding to them.

Mr. **Biaggi**. Nevertheless, the Congress has failed to enact a Federal ban against these bullets. A major reason for this inaction has been the administration's unwillingness to endorse this legislation and its inability to develop an alternative proposal of its own.

Much of the problem has centered around a bureaucratic squabble between the U.S. Treasury and Justice Department about how to effectively deal with the cop killer bullet issue.

I have been in close contact with both Justice and Treasury officials in an effort to break this impasse and I am deeply distressed that unless a miracle occurred overnight, the administration officials scheduled to testify this morning are once again either unwilling or unprepared to offer anything constructive in our effort to protect police against cop killer bullets.

Mr. Chairman, I was always under the impression that this administration was very supportive of law enforcement. I really believed that. It may be of Republican origin, and I am a Democrat, but when it comes to a question of this nature, and law enforcement, we transcend partisan politics. I genuinely believe that. I really believe the President feels that way. I think he is being misled. He is being misguided, and the law enforcement personnel of our Nation are being betrayed.

I am confident that if the President knew what was happening in these agencies of his, he would take firmer action forthright. But in the end, the responsibility will be his. If this administration fails to come forward in a more cooperative spirit, and to provide an acceptable alternative, which they have failed to do in some 5 years—the responsibility of that would have to rest on the President, for he is the head of the administration—and I regret that. This is not a question of partisan politics, Mr. Chairman, this is a question of policemen's lives.

I want to emphasize that I am more than willing to accept modifications to H.R. 953 as long as a need is established and the intent of the legislation is not compromised; namely, to make it as difficult as possible for criminals to obtain cop killer bullets without infringing on the rights of legitimate gun users.

Let me add at this point that contrary to a popular misconception generated by the NRA, our legislation does not seek to affect in any way ammunition made originally or primarily for rifle use. It is another spurious argument. They are waving a red flag to the sportsmen.

The story is, well, this will affect your ability to hunt; this is an encroachment on your right as an American citizen. It is without basis, it is a lie, the most damnable lie that I have heard during my 16 years in the Congress from any representative of any organization.

The only point that I am totally inflexible on is the need for prompt and effective action. Perhaps political realities will not allow us to enact the perfect long-term solution, but we should at least deal with the problem in the short term and place a Federal ban on those armor-piercing bullets that we know currently exist and are not used by law-abiding citizens. Even the National Rifle Association has stated that "ammunition designed to cut through armor is not used by hunters or competitive shooters," that is a quote. The quote commences "ammunition designed to cut through armor is not used by hunters or competitive shooters," end quote, so there would appear to be no argument that those bullets do exist.

In fact, I would like to point out for the record, that I previously submitted to the subcommittee chairman a list of eight handgun bullets that my research has identified as armor-piercing.

Mr. Chairman, at this time I would like to read an excerpt from an April 16 letter signed by top officials from the International Association of Chiefs of Police, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum.

Their letter, which was sent to Members of Congress, states:

> On behalf of our respective members, we, the undersigned, would like to express our support of S. 555 and H.R. 953, the Law Enforcement Officers Protection Act . . . Federal legislation to ban armor-piercing bullets must be passed. We recognize that there are problems in defining those bullets that will be banned, but we feel that it is time to put all reservations aside in order to provide the maximum protection possible to the dedicated men and women who daily risk their lives for the welfare and protection of our citizens. As long as the manufacture and sale of armor-piercing ammunition remains unregulated, the possibility that a law enforcement officer will be killed or seriously wounded remains unacceptably high.

Mr. Chairman, I would like to associate myself with those sentiments, and with your permission, I would like to insert the full text of that letter in the hearing record.

Mr. Hughes. Without objection, so ordered.

[The letter follows:]

President
Howard L. Runyan Sr
Passaic Township
Stirling NJ

Immediate Past President
Lee F. Callahan
Fort Lauderdale FL

First Vice President
Thomas J Sardino
Syracuse NY

Second Vice President
John J Norton
Sacramento CA

Third Vice President
Robert W Landon
Helena MT

Fourth Vice President
Joe D. Casey
Nashville TN

Fifth Vice President
Charles D. Reynolds
Dover NH

Sixth Vice President
Charles A. Gruber
Quincy IL

Treasurer
Thomas C. Durett
Beckley WV

Division of State and
Provincial Police
General Chairman
Jack B. Walsh
Columbus OH

Division of State
Associations of
Chiefs of Police
General Chairman
Michael G. Shanahan
Seattle WA

Past President and
Parliamentarian
Francis B. Looney
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International
Association of
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Police, Inc.
Thirteen Firstfield Road
PO Box 6010
Gaithersburg, Maryland 20878
Phone (301) 948-0922
Cable Address IACPOLICE

Norman Darwick
Executive Director

April 16, 1984

The Honorable Daniel P. Moynihan
United States Senate
464 SROB
Washington, D.C. 20510

Dear Senator Moynihan:

On behalf of our respective members, we, the undersigned, would like to express our support of S.555/H.R.953, the Law Enforcement Officers Protection Act. This legislation is needed to eliminate the threat posed by the availability of ammunition capable of penetrating the soft body armor worn by law enforcement officers and other public officials.

Lightweight body armor that is comfortable enough for continuous use during a tour of duty became widely available in 1975. Since that time, the lives of some 400 law enforcement officers have been saved by bullet-resistant vests. Currently, approximately 50 percent of all law enforcement officers in this country wear this protective apparel. If legislation introduced in the House by Congressman I.T. Valentine is passed, many more officers will be provided with vests. The bill, H.R.4346, authorizes federal funds for the purchase of soft body armor for police officers.

The security which soft body armor provides is being violated, however, by the availability of armor-piercing ammunition. Soft body armor cannot protect against every possible threat, but there is no reason for armor-piercing bullets to be on the market. We can find no legitimate use, either in or out of law enforcement for such bullets. Despite the claims of manufacturers that their bullets are for police and military use only, there has not been any attempt to legally prevent their availability to the public. Indeed, these packaging labels are merely a ludicrous ploy to gain market acceptability, since no enforcement of the regulation is possible. Furthermore, these bullets are not used by either law enforcement or the military. Many agencies have expressly prohibited their officers from using them because they are too dangerous.

Federal legislation to ban armor-piercing bullets must be passed. We recognize that there are problems in defining those bullets that will be banned, but we feel that it is time to put all reservations aside in order to provide the maximum protection possible to the dedicated men and women who daily risk their lives for the welfare and protection of our citizens. As long as the manufacture and sale of armor-piercing ammunition remains unregulated, the possibility that a law enforcement officer will be killed or seriously wounded remains unacceptably high.

We urge you to do all in your power to ensure that the Law Enforcement Officers Protection Act passes this year. Thank you for giving this matter your attention.

Sincerely,

Norman Darwick
Norman Darwick
Executive Director
International Association of
Chiefs of Police

William Matthews
William Matthews
Executive Director
National Organization of Black
Law Enforcement Executives

Cary Bittick
Cary Bittick
Executive Director
National Sheriffs' Association

Gary Hayes
Gary Hayes
Executive Director
Police Executive Research Forum

Mr. Biaggi. At a March Senate hearing on legislation to ban cop killer bullets, the NRA testified that since—I wish you would listen to this carefully and grasp the full implication—"that since there has been no rash of criminal misuse of armor-piercing handgun ammunition * * * there is no demonstrated need for this legislation."

The NRA apparently, by that statement, is willing to wait until we have a rash of criminal misuse. When they say rash, I have to assume they are talking in terms of numbers. I don't think one would represent a rash to them, or two police officers getting killed, or three. I don't know, maybe four might represent a rash, or would it be 10, or 20? What number would represent a rash in order to justify support of this legislation? It is cruel. It is unbelievable, really. When I heard it I didn't believe it. I made certain I read it, to make certain I heard properly, and there it was in the record.

The question was, Was there a need for this legislation? The response—there has been no rash of criminal misuse of armor-piercing handgun ammunition. There is no demonstrated need for this legislation.

The NRA may be willing to wait and see how many police officers die from the cop killer bullets, but I am not, and I am sure you are not either, Mr. Chairman, nor is any Member of Congress, when the issue is put as bluntly as that—and that is the issue.

As legislators, it is our job to prevent police deaths, not respond to them. What better reminder of this fact than peace officers Memorial Day which took place just 2 days ago, and many members went forward and participated. There were widows with children. There were police officers there who might well be victims themselves one day.

I don't know that they will be—that they will be killed with armor-piercing bullets, I don't know. But whatever way they may be killed, that threat—if it is humanly possible—should be eliminated. This armor-piercing bullet issue represents a very serious threat. Law enforcement officers, when they wear those bulletproof vests, have a right to expect that at least their torsos will be protected.

In the State of New Jersey, not too long ago, Mr. Chairman, I am sure you recall that a State trooper was killed, he was struck in the torso, in the torso. If he was wearing a bulletproof vest, his life would have been saved. They were not armor-piercing bullets. There are armor-piercing bullets out there being used by criminals. We find them in the possession of criminals who are arrested. And if they have them, they have them for a specific reason, to overcome the advantage that the police officer has by wearing a bulletproof vest.

We had an illustration in the Brinks robbery where the criminal himself wore a bulletproof vest. What a comedy that is—both criminal and police officer wearing bulletproof vests. The police officer uses the traditional bullet. He can fire at the felon, and the felon will be saved. Now, if the felon uses armor-piercing bullets, the police officer is doomed. That is a scenario that did occur—both were wearing vests.

We have a memorandum that shows New York City Police have arrested more than 50 felons who were wearing bulletproof vests. Now, all they need is to use armor-piercing bullets. And, believe me, that will happen more and more. They also argue that, well, why do we need it? Police officers were not killed by armor-piercing bullets. Lie. Untruth.

In Florida, two police officers were killed with armor-piercing bullets. They argue, well, they were not wearing bulletproof vests. Really? What difference would that have made when we have clearly demonstrated time and time again these projectiles have the ability to go through the front and back panels of a bulletproof vest, as well as several telephone books; and here we illustrated, these projectiles will go through 44 layers of Kevlar, and go through 4 inches of maple wood? What difference would it have made if the police officers were in fact wearing bulletproof vests?

Their argument was that no police officer has been killed by them. Well, we demonstrated that two have. Are they about to change their position; or was I correct, two deaths don't represent a rash? Is it 10, 20, 30, who knows? I don't know the calculation that goes in their mind. I don't know the logic, because there is no logic. This is a coldblooded doctrinaire position that has no place in our deliberations.

I stated that Peace Officers Memorial Day took place just 2 days ago. This event, which is commemorated each year on May 15, brought the families and comrades of 147 law enforcement officers who were killed in the line of duty during 1983, to Washington, DC. The event served as a grim reminder of the need to better protect those who protect us.

Ironically, many of the police officers are members of the NRA, many of them. It would seem to me the NRA would be more responsive and more sensitive to the life-threatening risks cop killer bullest pose to police.

During the last 10 years, more than 1,600 law enforcement officers were killed in the line of duty—nearly 1 death every 2 days. This is more than a startling statistic, this is an American tragedy, and one that cannot and must not be ignored. The prompt enactment of a ban against armor-piercing cop killer bullets is the most important step we can take at this time to improve police protection.

Failure to enact such a ban would be a slap in the face to our Nation's law enforcement personnel, and I hope the administration understands that.

[The statement of Mr. Biaggi follows:]

NEWS

FROM CONGRESSMAN

MARIO BIAGGI

19TH CONGRESSIONAL DISTRICT, N.Y. BRONX AND YONKERS

MAY 17, 1984

TESTIMONY ON ARMOR-PIERCING "COP KILLER" BULLETS PRESENTED BEFORE THE HOUSE SUBCOMMITTEE ON CRIME BY U.S. REP. MARIO BIAGGI OF NEW YORK

Mr. Chairman, I am not here today to rehash the many arguments against armor-piercing "cop killer' bullets. With the help of your Subcommittee, which held the first congressional hearings on this issue more than two years ago, the case against these bullets has been made. As a 23-year police veteran, I am here today to reiterate, in the strongest terms possible, the need for passage of legislation to outlaw "cop killer" bullets. As we celebrate National Police Week, there is no better way to demonstrate our support and concern for our nation's law enforcement community than favorable action on this critical police protection issue. I view today's hearing as a springboard toward achievement of that goal by the end of this year.

A brief chronology of events leading to this hearing today reveals that I was first informed about this problem in 1979 by the New York City Patrolmen's Benevolent Association. I conducted an extensive investigation and first authored a bill dealing with the issue of "cop killer" bullets in 1980. H.R. 953, a bill to ban the future manufacture, importation and sale of armor-piercing handgun ammunition, as well as establishing enhanced penalties for criminals who use such ammunition, was introduced in January 1983. H.R. 953 currently has 184 cosponsors and an identical Senate measure, S. 555, introduced by Pat Moynihan has 18 cosponsors. In addition to this overwhelming congressional support, this legislative effort has been endorsed by major police organizations across the country, as well as by more than 150 editorial boards throughout the nation. Ten states and a number of localities have already outlawed these awesome projectiles. In fact, just last month my home city of New York unanimously approved a resolution endorsing H.R. 953. (With your permission, Mr. Chairman, I wish to insert the full text of the New York City Council's resolution of support in the hearing record.) Simply put, Mr. Chairman, there is more than sufficient incentive for a federal ban against "cop killer" bullets.

The real and potential threats armor-piercing handgun ammunition pose to police officers have been clearly documented, and with your permission, Mr. Chairman, I wish to insert in the hearing record testimony I recently presented before a Senate Subcommittee detailing the strong case against "cop killer" bullets. Nevertheless, the Congress has failed to enact a federal ban against these bullets. A major reason for this inaction has been the Administration's unwillingness to endorse my legislation and its inability to develop an alternative proposal of its own. Much of the problem has centered around a bureaucratic squabble between the U.S. Treasury and Justice Departments about how to effectively deal with the "cop killer" bullet issue. I have been in close contact with both Justice and Treasury officials in an effort to break this impasse and I am hopeful that following my testimony we will hear some constructive comments from the Administration officials scheduled to testify.

Although I have not been informed of the position the Administration will take today, I want to emphasize that I am more than willing to accept modifications to H.R. 953, so long as a need is established and the intent of the legislation is not compromised--namely, to make it as difficult as possible for criminals to obtain "cop killer" bullets, without infringing on the rights of legitimate gun users. Let me add at this point that contrary to a popular misperception generated by the NRA, my legislation does not seek to affect, in any way, ammunition made originally and/or primarily for rifle use.

The only point that I am totally inflexible on is the need for prompt and effective action. Perhaps political realities will not allow us to enact the perfect long-term solution, but we should at least deal with the problem in the short-term and place a federal ban on those armor-piercing bullets that we know currently exist and are not used by law abiding citizens. Even the National Rifle Association has stated that "annumition designed to cut through armor is not used by hunters or competitive shooters," so there would appear to be no argument that those bullets do exist. In fact, I would like to point out for the record that I have previously submitted to the Subcommittee Chairman a list of eight handgun bullets my research has identified as armor-piercing.

Mr. Chairman, at this time, I would like to read an excerpt from an April 16th letter signed by top officials from the International Association of Chiefs of Police, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum. Their letter, which was sent to Members of Congress, states,"On behalf of our respective members, we, the undersigned, would like to express our support of S. 555/H.R. 953, the Law Enforcement Officers Protection Act . . . Federal legislation to ban armor-piercing bullets must be passed. We recognize that there are problems in defining those bullets that will be banned, but we feel that it is time to put all reservations aside in order to provide the maximum protection possible to the dedicated men andwomen who daily risk their lives for the welfare and protection of our citizens. As long as the manufacture and sale of armor-piercing ammunition remains unregulated, the possibility that a law enforcement officer will be killed or seriously wounded remains unacceptably high." Mr. Chairman, I would like to associate myself with those sentiments and with your permission I would like to insert the full text of that letter in the hearing record.

At a March Senate hearing on legislation to ban "cop killer" bullets the NRA testified that since "there has been no rash of criminal misuse of armor-piercing handgun ammunition . . . there is no demonstrated need for this legislation." The NRA may be willing to wait and see how many police officers die from the "cop killer" bullets, but I am not. As legislators, it is our job to prevent police deaths, not respond to them.

What better reminder of this fact than "Peace Officers Memorial Day," which took place just two days ago. This event, which is commemorated each year on May 15, brought the families and comrades of the 147 law enforcement officers who were killed in the line of duty during 1983 to Washington, D.C. The event served as a grim reminder of the need to better protect those who protect us. During the last 10 years, more than 1,600 law enforcement officers were killed in the line of duty--nearly one police death every two days. This is more than a startling statistic, this is an American tragedy, one that cannot and must not be ignored. The prompt enactment of a ban against armor-piercing "cop killer" bullets is the most important step we can take at this time to improve police protection.

Mr. Hughes. Thank you very much, Mario, for, I think, one of your most eloquent statements and I have heard a lot of your statements in the some 10 years I have been here in the Congress. Your statement is extremely incisive and I couldn't agree with you more.

Let me just say to you, that I believe that there are those within the administration, in all fairness, that want to develop such a standard. I think that they have been frustrated for a number of reasons. I am satisfied that they are having a very difficult time developing proper criteria—criteria that would eliminate the ammunition that has no legitimate or sporting value from that which has sporting value. I think that has been a serious problem.

I have talked with a number of people that really are not in policy, that are in the technical side of these agencies, and they have been grappling with the problem for a number of months. But I am also satisfied that it is not impossible, that they have developed some standards which we are now privy to, which would be a step in the right direction. And it is my intent to do as I have indicated in my opening statement and such as you have recommended, and that is move ahead, and do the very best that we can.

I think we can develop a responsible bill. And I hope that our colleagues in the agencies that have been working on this issue, will work with us in developing the very best initiative that we can develop. But that is my intent. We have waited for a long time.

I really regret that OMB has not permitted the agencies to be frank with us, and candid, to assist us in our job. I have been very tough on Justice in the past because they have not submitted statements to give me ample time to prepare for hearings. It is not unusual for statements to come in at 8 o'clock, 9 o'clock at night. And I convene a hearing in the morning not having really the benefit of the statement.

I have found that it is not always Justice's problem. They send the statements over to OMB, and OMB sits on them, for one reason or another, and doesn't release them. I would venture to say that in more than half of the initiatives that come out of this subcommittee, we haven't had the benefit of Justice's views—not always Justice's fault, as I have indicated—the statements have not been cleared, they have not been authorized to come in and testify. That is unfortunate, because I think that they can make major contributions.

In some instances they have come forward after we have reached full committee, or even in instances where we have gone to the floor. When we modified the posse comitatus law, we heard from Justice because of the Department of Defense opposition to the initiative, after we had moved the legislation out of subcommittee.

So, I think it is unfortunate that we haven't had that assistance, but we are not going to permit that to deter us. We are going to give it the good old American try, I assure you of that. We are going to do the very best that we can to develop a responsible bill, if at all possible.

Now, having said that, some of the administration opposition to your bill is because of the use of the term bullet rather than the term cartridge, which they argue isn't practical.

Was it your specific intent in using the term bullet to use it in its broad dictionary definition as a cartridge rather than the more narrow sense as a projectile?

Mr. **Biaggi**. Well, I understand that, Mr. Chairman. First, before I directly respond to that, let me say that I understand the problems within the various agencies. When I made reference to them, I said they were squabbling. When you have squabbling, obviously you have two sides, and I understand the different points of view; and there are people who are supportive, and there are those who are not.

I also recognize, and I have stated many times, that there is a problem, a technical problem. But on the other side of that, we can come forward and be as specific as defining or enumerating the eight or nine bullets themselves.

I don't expect, Mr. Chairman, that we will ever get a perfect bill, but at least let's get something.

Mr. **Hughes**. I think you know this subcommittee has not permitted the squabbling that takes place to deter us from moving ahead.

Mr. **Biaggi**. Oh, I am sure of that, especially with you as chairman.

But also, we are talking about an issue that was raised in 1979. I received this from Acting Director Stephen Higgins of the Department of Treasury, where he states, in response to my letter, "Relative to the increasing availability of special high-powered ammunition, specifically .357 caliber [KTW, Inc.], we share your concern and that of all law enforcement agencies with the availability of this and other ammunition capable of going through the body armor used by officers, we sincerely regret that law officers have lost their lives through misuse of this ammunition."

Clearly, they are aware and they share my concern. And while they "sincerely regret that law officers have lost their lives through the misuse of this ammunition," they also informed me in the 1979 letter that the Gun Control Act of 1968 does not restrict the sale of any type of ammunition, and that this can only be done by amendment to the act—and that is what we are doing.

We also have one from the Justice Department—just this year—as well as all of this correspondence from prior years. We have been in contact with the administration. This one is from Robert McConnell, who states, there was some technical deficiency but he remains optimistic. "I remain optimistic that we have now resolved the definitional problems which have plagued this legislation in the past, that we will have a proposal for submission to the Congress in the near future despite acrimonious public attacks upon our efforts."

And those attacks might well have been mine, and clearly, they were justified, because I started in 1979. And the agency, with all the expertise, or the administration with all the expertise available, couldn't produce the kind of response that could be incorporated into this legislation. But he did say they would have a proposal for submission to the Congress in the near future, and that was January 31. I still haven't seen it.

Mr. **Hughes**. We are interested in knowing your own view on the definition, however, of bullet.

Mr. BIAGGI. I will get back to that, it is really not important.

Mr. HUGHES. We are talking about the cartridge especially.

Mr. BIAGGI. We use bullet because most people understand bullet. It is the bullet, the projectile that goes out and does the actual penetrating. It is really not significant. It is a technical point. If you want to be unkind, it is a specious question.

When I say bullet, it is a general use of the general expression that most people have come to understand when they talk in terms of cartridge, or shell, or whatever.

Mr. HUGHES. Thank you. Thank you very much.

The gentleman from Florida.

Mr. SHAW. Congressman Biaggi, I have just one question which is more of in a technical nature. In paragraph 3, the last paragraph, of the bill that you have proposed, you provide that the " 'restricted handgun bullet' means a bullet that, as determined by the Secretary of the Treasury, when fired from a handgun with a barrel 5 inches or less in length, is capable of penetrating body armor."

At that distance, would you contemplate that that firing would take place in order to see if you have the necessary penetration?

Mr. BIAGGI. Point-blank range.

Mr. SHAW. Is that a scientific term that would be sufficient?

Mr. BIAGGI. I don't think it is scientific, it is a practical term. We are talking about very close range—no more than 3, 4, 5 feet from the body. People have different notions. Some people say point-blank, it is right at your chest. Other people may say point-blank, meaning 3, 4, 5 feet away.

Mr. SHAW. This might be an area that we would want to perhaps amend the language somewhat, so that we are sufficiently definite—so that we don't get tangled up on the question of vagueness. Would you agree that that might be something that we might want to look at?

Mr. BIAGGI. Sure.

Mr. Shaw, I am concerned with the basic thrust of the legislation. If Treasury comes forward, Justice comes forward, whomsoever comes forward, or we develop it here in the committee, comes up with any kind of resolution to any one of the questions that remain consistent with the original thrust, we have no objections to it. We would be happy to support it.

Mr. SHAW. Your legislation clearly mandates regulations in order to fill these gaps by your referring to the determination of the Secretary of Treasury.

I want to join Mr. Hughes in congratulating you, not only for a very fine statement this morning, but also for bringing this legislation to us. It has not gone unnoticed, Mr. Biaggi, you have given frequent 1-minute speeches on the floor of the House with regard to this subject. You have also written many "Dear Colleague" letters.

I know of your deep dedication to the passage of this legislation. And I also know that when Mr. Biaggi works hard enough on something, that it gets done, and particularly in this instance, something that I feel so reasonable and so needed. I would like to congratulate you on what you are doing and look forward to your success with this legislation.

Mr. **Biaggi**. Thank you, Mr. Shaw. I am hoping that we will be able to successfully complete this initiative.

Mr. **Shaw**. Thank you.

Mr. **Hughes**. The gentleman from Florida, Mr. Smith.

Mr. **Smith**. Thank you, Mr. Chairman.

I don't have any questions of the gentleman other than to congratulate him on an excellent statement. I would like to lend myself to the statement and congratulate him for this bill, and tell him that after his statement I am prouder than ever to be a cosponsor of it. It is a great privilege to be able to serve in Congress with a gentleman such as him.

With reference to Mr. Shaw's comment regarding the definition of a restricted handgun bullet, one of the reasons I have asked for the definition of an armor-piercing bullet is that perhaps we can avoid the whole question of range and firing if you decide exactly what would be, at the present time, all of the technological explanations, definitions, of what would be classified as armor-piercing, and indicate them and put them in the bill—I think you might have probably just as good, or better a chance of having a bill which sustains any attack against it on the grounds that it is unconstitutional because it is overbroad, or vague, or it is whatever, as you know, the constitutional attacks on criminal statutes.

So I would, at some point in time before the markup, hope that, we can look at in the terms as the gentleman and the chairman indicated. I also hope we can have that information from the Justice Department. Perhaps if we threatened them with a few armor-piercing bullets, they might let it go. [Laughter.]

I thank the gentleman once again. I know that within this committee, something will happen. Beyond that, I am hopeful that we can get it all the way through. Thank you.

Mr. **Hughes**. I want to thank you once again for a very fine statement and commend you for your tremendous leadership. I have noted your number of 1-minutes, and that is taking you away from ocean dumping, for which I am thankful, as you focus in on this most important issue.

Mr. **Biaggi**. Now that you have raised the issue, the chairman is indomitable and persistent in his own undertakings, and I am sure the people of New Jersey will appreciate that, with cleaner beaches and cleaner waters.

Thank you.

Mr. **Hughes**. I thank the gentleman.

The Subcommittee on Crime is pleased to welcome Robert Powis, the Deputy Assistant Secretary of the Treasury for Enforcement, who was named to that position in June 1981. Mr. Powis previously served with distinction in the U.S. Secret Service as a special agent for some 26 years, most recently as the Assistant Director for Investigations.

He has, in addition to his positions at Secret Service Headquarters, served as special agent in charge of the Los Angeles Field Office, the Special Agent-In-Charge of the Baltimore office, and SAC of the Scranton office.

Mr. Powis, we have your prepared statement which is extremely comprehensive. Without objection, it will be made a part of the record, and we are very happy to have you with us again this morning. We always select easy issues for you to come in and tackle. Welcome.

TESTIMONY OF ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY EDWARD M. OWEN, CHIEF, FIREARMS TECHNOLOGY BRANCH, AND JACK B. PATTERSON, ASSISTANT CHIEF COUNSEL FOR FIREARMS AND EXPLOSIVES, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. POWIS. Thank you, Mr. Chairman, members of the subcommittee.

We are pleased to appear before you today to discuss this perplexing issue of armor-piercing ammunition and to comment on a variety of legislative proposals: H.R. 641, 953, 3791, et cetera.

I am accompanied here today by Mr. Edward M. Owen, on my right, the Chief of the Firearms Technology Branch of ATF, and Mr. Jack Patterson, the Assistant Chief Counsel for Firearms and Explosives of ATF. These gentlemen will assist me in answering any questions you may have regarding technical and other matters after my prepared statement has been entered.

I would like, at the outset, to furnish the subcommittee with some historical background and information regarding protective vests commonly worn by police officers and armor-piercing ammunition.

Armor-piercing ammunition has been around for a long time and its capabilities have been well-known by armor and ordnance experts both in the military and in civilian law enforcement. It is not a new phenomenon.

The Winchester group of the Olin Corporation produced an armor-piercing .37 Magnum as far back as 40 years ago. The so-called "KTW" ammunition has been relatively well-known in the domestic ammunition industry for the last 15 years.

These rounds designed way back when were not designed to kill police officers, and they were not designed to penetrate soft body armor, because soft body armor did not even exist at that time. They were designed to penetrate engine blocks of automobiles.

While information about armor-piercing ammunition was known in the industry, this information was not generally known by the public or, indeed, by many law enforcement officers until a television program highlighted the situation in 1981. Thereafter, there has been a great deal of publicity about armor-piercing ammunition which, in my view at least, has served to educate criminals and persons who would cause harm to others about the various kinds of ammunition which will pierce protective vests worn by police officers.

The general characteristics of ammunition which is specifically designed and marketed to pierce armor involve a solid projectile or a hard bullet core, a relatively large propellant charge and consequently a high muzzle velocity.

Protective vests or vests composed of soft body armor which are currently commonly worn by many police officers today have had a much shorter history. Tests by the Department of Justice in the early and middle 1970's led to a significant breakthrough in the

Department of bullet-resistant vests made of Kevlar which provided the police officer with a considerable amount of protection from bullets.

The first wide scale occurred under the auspices of the Department of Justice in 1975 when 5,000 vests were worn by police officers in 15 different cities. The first documented saving of life by use of one of these vests was in December 1975 in Seattle, WA.

Since that time, it is estimated that approximately 400 police officers lives have been saved from firearms attacks and another 200 have been protected from other injuries including those caused by auto accidents because they wore the vests.

At the present time, roughly half of the Nation's 570,000 police officers have bullet-resistant vests as part of their protective equipment. Unfortunately, and I think this is important in view of some comments made earlier today, only about 15 percent of the officers who have the vests regularly wear them.

Now, I submit that that is alarming when one considers the probability of assault that officers face. Eighty-two law enforcement officers were killed by firearms in 1982. Of the 82, 60 were shot with handguns. As many as 25 of these deaths might have been prevented if the officers had been wearing a Type II or a Type II-A Kevlar vest.

The main reason why officers do not wear soft body armor has to do with the amount of body heat retained by the material. Several new types of vests have been developed recently to allow for greater moisture absorption and air movement. It is hoped that these new styles will increase the wearing of the vests.

The Type II vest is the most commonly used today. It will stop nearly all of the handgun rounds that were used to kill officers in the last 10 years. The Type II-A vest is gaining wider use because it is lighter and somewhat cooler than the Type II. The Type II-A will stop more than 90 percent of the handgun bullets used in criminal attacks. The cartridges used in these attacks will likely be standard non-armor-piercing type ammunition.

Now, there are a number of fallacies connected with the whole issue of armor-piercing ammunition. Somehow these fallacies keep getting repeated by the media and by others, including two of the witnesses before I appeared here today, and they keep getting repeated as if they were fact. One of the main misconceptions connected with the entire issue of anti-armor-piercing ammunition is an assumption that soft armor vests were designed to stop just about every kind of handgun ammunition. This assumption is inaccurate. The design was to protect against the most frequently encountered ammunition while at the same time being comfortable, convenient and concealable to encourage its everyday use.

Another fallacy has to do with the question of Teflon coating. People seem to think that it is the Teflon coating on the ammunition which confers upon it its armor-piercing qualities. This is inaccurate. Teflon is little more than a cosmetic additive. It adds only an infinitesimal amount of velocity to an armor-piercing bullet, and provides some protection to the gun bore. The armor-piercing qualities depend upon the composition of the bullet, its shape, the amount of propellant, barrel length, muzzle velocity, and other factors.

Another misconception deals with the use of vests by police officers who have been killed by armor-piercing bullets. To the best of our knowledge, no police officer has ever been shot and killed by an armor-piercing round which has penetrated a soft body armor vest being worn by the officer.

There were two officers killed by armor-piercing ammunition in 1976 in the State of Florida. The incident was part of the same incident—they were both killed in the same incident. Neither of the officers were wearing vests. Both of them were shot in the head.

Mr. Chairman, that occurred in 1976. We know of no other situation where police officers have been killed by armor-piercing ammunition.

In the meantime, in the 6 years, from 1977 through 1982 inclusive, 166 police officers have been killed by .38 caliber handgun ammunition. Yet, no one is going around calling .38 caliber cop killer bullets. I submit that for your consideration.

In the same period of time, 399 police officers have been killed by handgun ammunition which is not armor-piercing.

I want to discuss another fallacy that was mentioned here earlier, and that is the statement that most of the armor-piercing ammunition is Communist ammunition. Mr. Chairman, I submit that that is bunk.

The facts are these: About 6 years ago, 13 million rounds of Czechoslovakian ammunition, 9-millimeter, was imported into this country on a one-time basis by an American citizen who was living in England. The ammunition came in, it was very inexpensive, and it has been used extensively in target practice for the last 5 or 6 years. I would submit to you that the great bulk of this ammunition has been shot up. It is not a factor on the market today, and the amount available is relatively small when compared with the total amount of ammunition in existence.

The legislative proposals contained in H.R. 641 and H.R. 953 have a number of problems which lead us to believe that they will be unenforceable and, hence, we are not able to support them. The performance of a bullet or projectile is dependent upon a number of factors, including the quantity and type of propellant power used to assemble the bullet into a cartridge. The performance of a bullet which will not penetrate armor on a test can be easily changed by varying the quantity and/or type of propellant so that the same bullet will indeed penetrate armor.

The regulations required by these legislative proposals would theoretically require the testing of an infinite variety of cartridges, each having a slightly different quantity and/or type of propellant. In any event, the regulation or regulations which attempt to address the problem should deal with projectiles specifically designed and marketed as armor-piercing, rather than conventional bullets or projectiles.

Another problem is that many handguns currently produced fire rifle type ammunition. It is likely that much sporting rifle ammunition when fired from a 5-inch barrel would penetrate soft body armor. Therefore, under S. 555 or H.R. 953, all rifle cartridges for which handguns are made would have to be tested. This would be a monumental task. Many sporting rifle cartridges would end up being restricted by this bill. This is a factual statement. It is not something that we have dreamed up.

Even though regulations may be prescribed under H.R. 641 and H.R. 953, which will list certain restricted ammunition, the physical identification of the restricted ammunition, as opposed to similar cartridges which are not restricted, would be very difficult, particularly for the importer or the firearms dealer.

Mr. Chairman, at this time I would like to show you five rounds of 9-millimeter ammunition. I would submit, and Mr. Owen will show them to you personally, that on examining these you are not able to tell which is which.

[Demonstration.]

Mr. Powis. The fact of the matter is that two of these rounds will penetrate soft body armor, three of them will not.

I would submit to you that the legislation that is being proposed would put a burden on the firearms dealer in terms of being asked to try to determine which is penetrating and which is not, which cannot be overcome.

The testing of ammunition contemplated by the bill would be burdensome because virtually all domestically produced ammunition would need to be tested. Additionally, the bill would require the testing of all foreign ammunition imported into the United States. The changing of ammunition designs would create an additional burden by mandating continuous testing.

The purpose of this bill may be thwarted if ammunition, which although tested and determined to be non-armor-piercing, is used in firearms having a barrel length exceeding that of the test weapon. A longer barrel can cause increased muzzle velocity which, in turn, can give a projectile from a nonrestricted cartridge the ability to penetrate soft body armor.

In addition to the rifle ammunition which could be used in certain handguns, there is a variety of other readily available handgun cartridges presently in commercial channels that are used for sporting purposes which are not designed or intended to be armor-piercing or to penetrate soft body armor, but which would probably cause penetration and which would be banned.

I would submit, Mr. Chairman, that this is important. This bill goes too far. It does not just ban true armor-piercing ammunition, it bans a considerable amount of sporting ammunition which is available in much greater quantity.

For all of the above reasons, it is our belief that the legislative definition of armor-piercing bullets in H.R. 641 and H.R. 953 is imprecise and results in a situation whereby manufacturers and importers will not be given adequate notice to decide which bullets are legal and which are prohibited.

Mr. Chairman, this administration shares the committee's concern about the safety of police officers. We will not take a back seat to anyone regarding this concern. And, frankly, sir, I must tell you that I resent statements and the implications that were made earlier that if you don't support this legislation, you are not for the safety of police officers. That is not the case. I speak personally, I speak for the President, and I speak for the administration.

I don't think any administration in recent times has a better record for support of police officers, law enforcement, and an anticrime general record.

We have taken a number of steps which underscore and highlight this concern and which have directly contributed to police officer safety.

First, the administration has proposed legislation as part of the Comprehensive Crime Control Act of 1984 which would impose a mandatory prison sentence of not less than 5, nor more than 10 years, for an individual who uses or carries a handgun loaded with armor-piercing ammunition during or in relation to the commission of a crime of violence.

I would submit that this is an important legislative remedy.

Another important action taken by this administration which recognizes that there is no legitimate use for ammunition which is specifically designed and marketed as armor piercing, deals with contacts which we have made with manufacturers and importers of certain specifically designed types of armor-piercing ammunition. In these contacts we have requested voluntary compliance by the manufacturers and importers for a proposition whereby they will only sell to the U.S. military, to official Federal, State, and local law enforcement agencies and/or to foreign governments as authorized by law. We think that these contacts have been significant.

To the best of our knowledge. all of the manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition.

We do not believe that this ammunition is readily available in the marketplace. Am I saying that you can't get it? No, sir, I am not. If you look hard enough and move around the country far enough, you will be able to get some. But I am saying that this type of ammunition is not readily available and, also, that this type of ammunition exists in very small quantities compared to the total amount of ammunition which is out in the marketplace.

We have asked various individuals and groups to bring to our attention any indication that this kind of ammunition is readily available. We ask that again here today. We have not had people come forward and say that it is readily available.

We have stated—and I repeat this—that we will take followup action on any indication that you can buy this kind of ammunition on the open market.

We think that this measure that we have taken is a reasonable step and it indicates our concern for the safety of police officers by positive action and not by a cumbersome regulatory process which will not, in the long run, produce the desired results.

As I indicated previously, only one-half of the police officers in this country are currently issued soft body armor as part of their equipment. Recent information indicates that only 15 percent of these officers regularly wear soft body armor. Statistics further indicate that many more lives of police officers could be saved if they had Kevlar vests and wore them regularly.

Officials of the Bureau of Alcohol, Tobacco and Firearms and myself recently met with representatives from a number of police associations and State and municipal administration groups to discuss this matter. We pointed out the fact that only one-half of the sworn police officers have body armor issued and that only 15 percent of the officers regularly wear them.

We asked for and received suggestions about trying to improve this situation. More information will be put out through association newsletters and magazines about the number of lives which could be saved if officers regularly wore soft body armor in a number of on-duty situations.

We agreed with these associations to form a study group which will explore some of the following possibilities:

One, additional ways to encourage police officers who have been issued soft body armor to regularly wear it.

Two, encouragement to State and local governments to procure soft body armor for all law enforcement officers.

Three, to explore the possibility of private funding for the procurement of soft body armor similar to the efforts of the Washington, DC Metropolitan Police Department within the last year.

Four, to arrange for further studies of why soft body armor is not being worn and when it should be worn.

I would encourage you, Mr. Chairman, and this subcommittee, to support these efforts. There is every indication that we can save as many as 20 police officers' lives annually if we can substantially increase the regular wearing of soft body armor by police officers and if we can get State and local governments to procure soft body armor for all sworn officers.

During and after administration representatives testified before the Subcommittee on Criminal Law of the Senate Judiciary Committee on March 7, 1984, suggestions were made that we attempt in some way to codify the voluntary agreements which we have made with manufacturers of specifically designed armor-piercing ammunition in an effort to arrive at some kind of legislative ban against the manufacture and importation of this type of cartridge.

We have been working at this problem within the administration since that time. And when I say we, Mr. Chairman, I am including the Justice Department. We have been working with the Justice Department over the past 6 weeks or so, since the March 7 hearing, to try to come up with some kind of a definitional setup.

Mr. Chairman, I should add that the Justice Department has not been muzzled here today. As you know, they did make an offer to come here last night, and I think there was some confusion back and forth about whether they would come or not. But the Justice Department has not been muzzled——

Mr. HUGHES. Let me just interrupt you——

Mr. POWIS. Yes, sir.

Mr. HUGHES [continuing]. Because I know a little bit about that. Justice told us that they could not come because they could not clear their position. They did not have a statement to us in time for us to review it and prepare for the hearing. And Justice is on notice—I am going to put Treasury on notice today, I had not previously—Justice is on notice that we want the statements the day before. Justice requires 2 weeks notice, and we give them 2 weeks notice for a hearing, so that they can prepare.

I can't prepare for a hearing unless I have a statement at least the night before so I can review it. So when Justice called back last night about 8 o'clock, I indicated to my staff that they were not going to testify because they had not complied with the rules. It seems to me they had enough time to clear that statement through OMB, and they did not. That is the reason Justice is not testifying today.

In the future, and we would request respectfully, that Treasury comply with the same rule that we have to comply with, and that is give us ample notice and give us a copy of your statement so that I, and my colleagues, have an opportunity to review it the day before. You know, we can't run a railroad that way. That is why Justice isn't here today—twofold, they didn't have the statement because they couldn't clear it because Justice didn't have a position at that point cleared through OMB and, second of all; they didn't comply with the rules.

Mr. Powis. Mr. Chairman, I have no quarrel with the statement that you have just made. I just wanted to clear the record to show that Justice wasn't muzzled. They did make an effort and did have an indication that they would appear here this morning. Also, I do want to make sure that you are aware—and I realize that we were late in getting it up here—but I want to make sure that you are aware that I personally delivered several copies up here last night so that you would have something to work with. I appreciate the fact that we should have had them up earlier.

As might be imagined, the effort that we have been going through over the last couple of weeks raises vexing technical and legal problems which are difficult to solve. I appreciate the comments that you made earlier, Mr. Chairman, because these are not unreal problems. These are not fake problems designed in some way to get around the issue. They are real legal and technical problems.

We are now considering legislation based on an attempt to define armor-piercing ammunition by its composition rather than by a cumbersome and unenforceable testing and regulatory process. Despite the efforts which have been expended we have not yet arrived at a satisfactory definition. We think that, however, that within the next week or two we will be able to tell whether or not an acceptable bill can be drafted and supported.

I would submit to you with all the candor and fervor I can muster, that we have been working on this and that we will continue to work on it, and I believe that we will come up with something within a week or two, at least a decision as to whether an acceptable bill can be formulated.

[The statement of Mr. Powis follows:]

STATEMENT OF THE HONORABLE ROBERT E. POWIS
DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT
DEPARTMENT OF THE TREASURY
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
MAY 17, 1984
WASHINGTON, D.C.

Mr. Chairman and members of the Subcommittee, we are pleased to appear before you today to discuss the issue of armor-piercing ammunition and to comment on a variety of legislative proposals such as are embodied in H.R. 641, H.R. 953, H.R. 3791 and Section 1006 of S. 1762. I am accompanied today by Mr. Edward M. Owen, Chief of the Firearms Technology Branch and Mr. Jack B. Patterson, Assistant Chief Counsel for Firearms and Explosives of the Bureau of Alcohol, Tobacco and Firearms. These gentlemen will assist me in answering any questions you may have regarding technical and other matters after my prepared statement has been entered.

I would like, at the outset, to furnish this Subcommittee with some historical background and information regarding protective vests commonly worn by police officers and armor-piercing ammunition. Armor-piercing ammunition has been around for a long time and its capabilities have been well known by armor and ordnance experts both in the military and in civilian law enforcement. It is not a new phenomenon. The Winchester Group of the Olin Corporation produced an armor-piercing .357 Magnum round of ammunition as far back as 40 years ago. The so-called "KTW" ammunition has been relatively well known in the domestic ammunition industry for the last 15 years. While information about armor-piercing ammunition was known in the industry, this information was not known by the general public or indeed by many law enforcement officers until a television program highlighted this situation in 1981. Thereafter there has been a great deal of publicity about armor-piercing ammunition which in my view has served to educate criminals and persons who would cause harm to others about the various kinds of ammunition which will pierce protective vests worn by police officers. The general characteristics of ammunition which is specifically designed and marketed to pierce armor involve a solid projectile or a hard bullet core, a relatively large propellent charge and consequently a high muzzle velocity.

Protective vests or vests composed of soft body armor which are commonly worn by many police officers today have had a much shorter history. Tests by the Department of Justice in the early or middle 1970's led to a significant breakthrough in the development of bullet resistant vests made of Kevlar which provided the police officer with a considerable amount of protection from bullets. The first wide scale test of these vests under the auspices of the Department of Justice occurred in 1975 when 5,000 vests were worn by police officers in 15 different cities. The first documented "saving of life" by use of one of these vests was recorded in December 1975 in Seattle. Since that time it is estimated that approximately 400 police officers have been saved from firearms attacks and another 200 have been protected from other injuries including those caused by auto accidents because they wore the vests.

At the present time roughly one-half of the nation's 570,000 sworn police officers have bullet resistant vests as part of their protective equipment. Unfortunately only about 15 percent of the officers who have the vests wear them regularly. This is alarming when one considers the probability of assault that officers face. Eighty-two law enforcement officers were killed by firearms in 1982. Of the eighty-two, sixty were shot with handguns. As many as 25 of these deaths might have been prevented if the officers had been wearing a Type II or Type II-A Kevlar vest. The main reason why police officers do not wear soft body armor has to do with the amount of body heat retained by the material. Several new types of vests have been developed to allow for greater moisture absorption and air movement. It is hoped that these new styles will increase usage of the vests.

The Type II vest is the most commonly used today. It will stop nearly all of the handgun rounds that were used to kill officers in the last ten years. The Type II-A vest is gaining wider use because it is lighter and somewhat cooler then the Type II. The Type II-A vest will stop more than 90 percent of the handgun bullets used in criminal attacks. The cartridges used in these attacks will likely be standard non-armor piercing type ammunition.

There are a number of fallacies connected with the whole issue of armor-piercing ammunition. Somehow these fallacies keep getting repeated by the media and by others as if they were fact. One of the main misconceptions connected with the entire issue of anti-armor-piercing ammunition is an assumption that soft armor vests were designed to stop just about every kind of handgun ammunition. This assumption is inaccurate. The design was to protect against the most frequently encountered ammunition while at the same time being comfortable, convenient and concealable to encourage its every day use.

Another fallacy has to do with the question of Teflon coating. People seem to think that it is the Teflon coating on the ammunition which confers upon it its armor-piercing qualities. This is inaccurate. Teflon is little more than a cosmetic additive. It adds only an infinitesimal amount of velocity to an armor-piercing bullet, and provides some protection to the gun bore. The armor-piercing qualities depend upon the composition of the bullet, its shape, the amount of propellant, barrel length, muzzle velocity and other factors.

Another misconception deals with the use of vests by police officers who have been killed by armor-piercing bullets. To the best of our knowledge no police officer has ever been shot and killed by an armor-piercing round which has penetrated a soft body armor vest being worn by the officer.

The legislative proposals contained in H.R. 641 and H.R. 953 have a number of problems which lead us to believe that they will be unenforceable and hence we are not able to support them. The performance of a bullet or projectile is dependent upon a number of factors including the quantity and type of propellent power used to assemble the bullet into a cartridge. The performance of a bullet which will not penetrate armor on a test can be easily changed by varying the quantity and/or type of propellent so that the same bullet will indeed penetrate armor. The regulations required by these legislative proposals would theoretically require the testing of an infinite variety of cartridges, each having a slightly different quantity and/or type of propellent. In any event the regulation or regulations which attempt to address the problem should deal with projectiles specifically designed and marketed as armor-piercing, rather than conventional bullets or projectiles.

Another problem is that many handguns currently produced fire rifle type ammunition. It is likely that much sporting rifle ammunition when fired from a 5-inch barrel would penetrate soft body armor. Therefore, under S. 555 all rifle cartridges for which handguns are made would have to be tested. This would be a monumental task. Many sporting rifle cartridges would end up being restricted by this bill.

Even though regulations may be prescribed under S. 555 which will list certain restricted ammunition, the physical identification of the restricted ammunition, as opposed to similar cartridges which are not restricted, would be very difficult. The testing of ammunition contemplated by the bill would be burdensome because virtually all domestically produced ammunition would need to be tested. Additionally, the bill would require the testing of all foreign ammunition imported into the United States. The changing of ammunition designs would create an additional burden by mandating continuous testing.

The purpose of this bill may be thwarted if ammunition, which although tested and determined to be non-armor-piercing, is used in firearms having a barrel length exceeding that of the test weapon. A longer barrel can cause increased muzzle velocity, which in turn, can give a projectile from a non-restricted cartridge the ability to penetrate soft body armor.

In addition to the rifle ammunition which could be used in certain handguns, there is a variety of other readily available handgun cartridges presently in commercial channels that are used for sporting purposes and which are not designed or intended to be armor-piercing or to penetrate soft body armor, but which would probably cause penetration and which would be banned.

For all of the above reasons it is our belief that the legislative definition of armor-piercing bullets in H.R. 641 and H.R. 953 is imprecise and results in a situation whereby manufacturers and importers will not be given adequate notice to decide which bullets are legal and which are prohibited.

Mr. Chairman, this Administration shares the Committee's concern about the safety of police officers. We will not take a back seat to anyone regarding this concern. We have taken a number of steps which underscore and highlight this concern and which have directly contributed to police officer safety.

First, the Administration has proposed legislation as part of the Comprehensive Crime Control Act of 1984 which would impose a mandatory prison sentence of not less than five nor more than ten years for an individual who uses or carries a handgun loaded with armor-piercing ammunition during or in relation to the commission of a crime of violence. This is an important legislative remedy. We feel very strongly that an enhanced, mandatory penalty is an important way to discourage the utilization of armor-piercing ammunition by criminals. We are in effect saying to the criminal, "If you commit a violent crime you will be prosecuted and sentenced. If in addition you use a deadly or dangerous weapon in the commission of this crime you will be faced with an enhanced punishment. Furthermore, if the weapon which you used or carried was a handgun loaded with armor-piercing ammunition, you will face an additional sentence of not less than five years which must run consecutive to a sentence imposed for the felony committed."

Another important action taken by this Administration deals with contacts made with manufacturers and importers of certain specifically designed types of armor-piercing ammunition. In these contacts, we have requested voluntary compliance by the manufacturers and importers for a proposition whereby they would only sell this type of ammunition to the U.S. military; to official Federal, state and local law enforcement agencies and/or to foreign governments as authorized by law. We think that these contacts have been significant. To the best of our knowledge all of the manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition. We do not believe that this type of ammunition is readily available in the market place. We have asked various individuals and groups to bring to our attention any indication that this kind of ammunition is readily available. We have stated that we would take follow-up action if this situation exists. We think that this was a very reasonable measure and it indicates our concern for the safety of police officers by positive action and not by cumbersome regulatory processes which will not in the long run produce the desired results.

As indicated previously only one-half of the police officers in this country are currently issued soft body armor as part of their equipment. Recent information indicates that only 15 percent of these officers regularly wear body armor. Statistics further indicate that many more lives of police officers could be saved if they had Kevlar vests and used them.

Officials of the Bureau of Alcohol, Tobacco and Firearms and myself recently met with representatives from a number of police associations and state and municipal administration groups to discuss this matter. We pointed out the fact that only one-half of the sworn police officers in this country have body armor issued to them and that only 15 percent of the officers regularly wear them. We asked for and received suggestions about trying to improve this situation. More information will be put out through association news letters and magazines about the number of lives which could be saved if officers regularly wore soft body armor in a number of on-duty situations. We agreed with these associations to form a study group which will explore some of the following possibilities.

1. Ways to encourage police officers who have been issued soft body armor to regularly wear it.
2. Encouragement to state and local governments to procure soft body armor for all law enforcement officers.

3. Explore the possibility of private funding for the procurement of soft body armor similar to the efforts of the Washington, D.C. Metropolitan Police Department.
4. Arrange for further studies of why soft body armor is not being worn and when it should be worn.

I want to encourage this Committee to support these efforts. There is every indication that we can save as many as 20 police officers lives annually if we can substantially increase the regular wearing of soft body armor by sworn police officers and if we can get state and local governments to procure soft body armor for all sworn officers.

During and after Administration representatives testified before the Subcommittee on Criminal Law of the Senate Judiciary Committee on March 7, 1984, suggestions were made that we attempt in some way to codify the voluntary agreements which we have made with manufacturers of specifically designed armor-piercing ammunition in an effort to arrive at some kind of legislative ban against the manufacture and importation of this type of cartridge. We have been working at this problem within the Administration since that time. As might be imagined this effort raises vexing technical and legal problems which are difficult to solve. We are now considering legislation based on an attempt to define armor-piercing ammunition by its composition rather than by a cumbersome and unenforceable testing and regulatory process. Despite the efforts which have been expended we have not yet arrived at a satisfactory definition. We think that within the next week or two we will be able to tell whether or not an acceptable bill can be drafted and supported.

The Administration is opposed to the provisions of H.R. 641 and H.R. 953 because of the reasons cited above and most specifically because it would set-up an ineffective and unenforceable regulatory and testing process and also because it would encompass a wide variety of ammunition used for sporting purposes which is not specifically designed to be armor-piercing. Along this line, we note with interest the fact that the full Senate Judiciary Committee voted 15-1 against a proposal by Senator Kennedy to amend S. 914 with language from Senator Moynihan's S. 555, which would have banned the manufacture, importation and sale of armor-piercing ammunition. The language voted down in S. 555 is identical to the language which appears in H.R. 641 and H.R. 953. While voting down the ban on armor-piercing ammunition, the Senate Judiciary Committee did, however, approve the mandatory sentence provision of S. 555.

We support in principle H.R. 3791 which would impose mandatory penalties for the use of armor-piercing ammunition during the commission of a Federal felony. We prefer, however, the language which appears in the Administration's Comprehensive Crime Control Act of 1984 which imposes this mandatory sentence when armor-piercing ammunition is used during or in relation to the commission of a Federal crime of violence.

I wish to commend you, Mr. Chairman, and this Subcommittee for your efforts in connection with this issue. I believe that you have effectively sought to deal with the facts of this problem and to sort out these facts from some of the emotionalism, inaccuracies and political rhetoric which have unfortunately clouded this subject.

Mr. Hughes. Thank you, Mr. Powis, for a good statement.

Since we are being candid, let's talk about not only the legal problems but the political problems, and there are some political problems. Let's be candid about it.

There are groups—and Mr. Biaggi mentioned some of them—that are adamantly opposed to anything; and there are folks within the administration and within the Congress that don't want to see any legislation move. So, complicating the entire process is the fact that we have some folks that want to derail the process.

Now, I recognize that you are not one of those folks, and I believe that you have been sincere. You have helped educate this subcommittee insofar as the technical problems. They are serious problems, and I don't discount them.

However, Justice had a proposal months ago. They were working, as I understand it, in concert with the Department of Treasury in endeavoring to try to overcome the technical problems. A proposal based upon that work was submitted to OMB and it has gone nowhere.

Now, we have made an effort to get a copy of that proposal. I trust that a copy of that proposal was shared with you at Treasury.

Mr. Powis. It was, sir.

Mr. Hughes. Was it shared at the time it was developed?

Mr. Powis. No, sir, it wasn't. It was shared subsequent to development.

Mr. Hughes. Did you get it as we did, by the back door or did you get it in the front door?

Mr. Powis. No, we got it right in the front door.

Mr. Hughes. I see. Why is it that we have such difficulty getting these documents? Has it got classified information that should not be shared with the folks on this subcommittee?

Mr. Powis. I cannot answer that, sir. But it does not contain any classified information, not to the best of my recollection, it was not a classified document.

I must tell you that we reviewed that in considerable detail and depth. We did have a lot of problems with the entire testing process. To be frank, personally, I do not think that is the way to go in attempting to codify some kind of legislation that would take care of the, for lack of a better term, what I would describe as that ammunition which is specifically designed and marketed to be armor piercing.

Mr. HUGHES. I share your concern. The reason we have been extremely patient, even though we have been most anxious to attempt to move ahead with the legislation, is that we are mindful of the fact that we have got some serious technical problems.

Let me ask you, are the problems at OMB technical, are they political, or are they both?

Mr. POWIS. I would not pretend to answer for OMB on that, sir.

Mr. HUGHES. I am asking you to answer for yourself.

Mr. POWIS. I think there is a whole range of problems that involve technical, legal, and political. I think it is a whole range of problems here.

Mr. HUGHES. Let me ask you another question. Does Treasury have problems with the technical testing procedure set up in the recommendations by Justice?

Mr. POWIS. Yes, sir, we do.

Mr. HUGHES. I see.

Have you endeavored to resolve those technical problems between your two agencies?

Mr. POWIS. I think the problem gets to the fact that—I guess our bottom line is that we feel that testing is not the way to go in this thing. I think our feeling is that if we are going to come up with legislation, the way to go is some kind of a definitional arrangement.

Yes, we have had problems with the manner of the testing right down the line. We had a lot of problems with the entire process.

Mr. HUGHES. Let me ask you why you can't go back this week and sit down with Justice and try to work out the differences? Why can't you do that?

Mr. POWIS. Mr. Chairman, we will be doing that as a follow-on to what has been going on. I will tell you very frankly that we have been meeting with Justice on a fairly regular basis in the last few weeks, and working on something that we think could be supported.

But the question is, and it is not resolved yet, I don't want to mislead you—I want to go back to what I said in my prepared statement. I think we will know within the next week or two whether or not we can come up with an acceptable definition.

Mr. HUGHES. I don't want to be unfair, but it seems to me that you have been sitting down with Justice since the notice went out that we were going to conduct a hearing.

My question is: Why is it that months ago when the proposal was first quoted, your Department didn't sit down with Justice and then endeavor in a concentrated way to resolve these problems?

Mr. POWIS. Well, sir, we did have meetings with Justice prior to the March 7 hearing and subsequent to the January date when their report on the testing process came out, there were some meetings back at that time. The outgrowth of those meetings, frankly, was what I have indicated to you earlier, that basically we oppose the testing process. We did not think that it was the way to go.

Mr. HUGHES. You know, you have observed and I am inclined to agree with you, that any ban on armor-piercing ammunition presently being manufactured and new ammunition as it is developed, is going to require testing, perhaps extensive testing. And I don't discount that.

Given the amount of ammunition that exists in this country, I recognize it is a gigantic task. I regret that many of my colleagues, you know, have somewhat discounted the difficulty that you have had.

However, are these really adequate grounds to reject the whole effort as you seem to suggest—maybe I am misreading your statement. We do the same type of testing of purity of food products, pollution; on wearing apparel, to see whether it is combustible, or safe; all kinds of fabrics that go into airplanes; fuel consumption of automobiles, and on and on I could go.

Isn't this endeavor—the testing of ammunition for the purposes which I believe you and I are striving—isn't that as important as the testing of the food and the other things that we are testing, at a tremendous cost?

Mr. Powis. Mr. Chairman, it certainly is important. I think that if we can come up with a better way to go that doesn't involve a massive testing effort, we will be better off. I would submit to you in all sincerity that does not discount the voluntary arrangement that we have made with the manufacturers; and do not discount the fact that the overall quantity of armor-piercing ammunition available is very, very small compared to the total amount of ammunition that is out there. But, certainly, it is important.

As I say, I think the way to go here, if we can come up with something that is satisfactory, is a definitional process involving the composition of the ammunition

Mr. Hughes. I think that's all the questions I have, except to extend an invitation. I am going to ask the chairman of the full committee for authorization to retain a consultant, if need be, to assist us with the technical problems.

I am going to ask my staff at this point to coordinate some meetings, because we are going to proceed to develop legislation beginning next week. I would invite Treasury and Justice to work with the staff. It is my intent to schedule a markup sometime in mid to late June. At this point we do have some criteria; Justice has a proposal which we are privy to. We have some other ideas that have been suggested, other States have developed initiatives.

We are going to do the very best we can to develop a responsible bill. I would invite Treasury to work with my staff. Eric Sterling is going to coordinate that. I hope that both Justice and Treasury can work with us in developing a responsible piece of legislation, one that will focus in on what in essence is advertised and exploited as armor-piercing ammunition that will provide the balance so that we are not eliminating legitimate ammunition.

I want to make sure that it is a responsible piece of legislation. That is why we have taken as long as we have, but we are going to move ahead. I would hope that Treasury will join us in an effort of doing the best we can in developing something that will prevent the statistics that we seem to point to as not being there.

I don't think we have to wait until we have 25 police officers killed in the line of duty by armor-piercing ammunition to justify an initiative.

I think we are on notice that the issue is not going to go away. It seems to me, as you have suggested, that we have at this point, since 1981, provided a great deal of ink on the subject of armor-piercing ammunition. I think we are on notice that it is going to be an increasing problem if we don't begin to deal with it. And I think that we have got to do it in a rational fashion, but we have got to do it before we begin to acquire the statistics that seem to be important around here before we move to try to prevent the occurrence of serious bodily injury or death. I hope that you will join me in that endeavor.

Mr. POWIS. I don't see any reason why we wouldn't, Mr. Chairman.

Mr. HUGHES. OK. The gentleman from Florida?

Mr. SHAW. I have no questions, Mr. Chairman.

Mr. HUGHES. I thank the gentleman.

Mr. POWIS. Thank you, sir.

Mr. HUGHES. The Subcommittee on Crime is pleased to welcome on behalf of the National Organization of Black Law Enforcement Executives, Mr. Isaiah Larkin. Mr. Larkin is joined with NOBLE as Project Associate working on the project of armor-piercing ammunition.

Prior to joining NOBLE this year, Mr. Larkin served for 11 years on the Maryland Parole Commission and has great experience in penological and correctional issues.

Mr. Larkin, on behalf of the subcommittee, we welcome you. If you will come forward, please, and take a seat at the witness table. We apologize for the delay. I never envisioned that we would be reaching you at this time of day, but we are delighted to have you.

We have your statement which will be made a part of the record in full and we hope that you will proceed as you sit fit. Welcome.

TESTIMONY OF ISAIAH LARKIN, PROGRAM ASSOCIATE, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES

Mr. LARKIN. Thank you, Mr. Chairman. I had invited Mr. Matthews, the executive director of NOBLE, to join me at the table, however, I will acknowledge his presence in the room.

Mr. Chairman and members of the subcommittee:

As we commemorate National Police Week across the country, I am pleased to appear before you today to express the National Organization of Black Law Enforcement Executives support of H.R. 953, H.R. 641, H.R. 3796, and H.R. 4346, and S. 555 and S. 1762, section 1006, companion legislation defining important concerns for the law enforcement community.

Just last month, NOBLE joined our colleagues at the International Association of Police Chiefs, the National Sheriff's Association, and the Police Executive Research Forum in appealing to you and the administration for passage of Federal legislation that would ban armor-piercing ammunition from the U.S. market.

The Law Enforcment Protection Act of 1984 is needed to eliminate the threat posed by the availability of ammunition capable of penetrating soft body armor worn by law enforcement officers and other public officials. Widely available and used since 1975, lightweight body armor has saved the lives of some 400 law enforcement officers.

The security which bullet-resistant body armor provides is being violated, however, by the availability of armor-piercing ammunition. We can find no legitimate use, either in or out of law enforcement, for such bullets. Despite the claims of manufacturers that their bullets are for police and military use only, there has not been any attempt to legally prevent their availability to the public.

These bullets are not used by either law enforcement or the military and many police agencies have expressly prohibited their officers from using them.

Even with voluntary cooperation, as long as the manufacture and the sale of armor-piercing ammunition remains unregulated, the possibility that law enforcement officers will be killed or seriously wounded remains unacceptably high.

In addition, NOBLE recommends your consideration of the International Association of Chiefs of Police position to the Occupational Safety and Health Administration to set regulations regarding the wearing of body armor by police officers as a basic equipment item, similar to current requirements for hard hats and steel plated shoes in the construction industry.

Finally, NOBLE believes that sufficient financial resources should be authorized to ensure enforcement of the proposed legislation, including provisions for adequate personnel and technological capabilities for testing. Such financial support should also include funds for the purchase of protective body armor by law enforcement agencies.

NOBLE believes that it is time to put all reservations aside and do all in your power to provide the maximum protection possible to the dedicated men and women who daily risk their lives for the welfare and safety of us all.

Mr. Chairman, thank you.

Mr. SHAW [presiding]. I thank you, sir, and I would like to thank you on behalf of the chairman and the members of this subcommittee for your continuing input, your close association in working with the other law enforcement officials and, of course, for your law enforcement official organizations, as well as for your fine testimony and willingness to be with us here—well, it is still this morning, although it is barely.

We thank you, and your statement will become a part of the record. It will be read with great interest by the members who are not here this morning, so your input will certainly have an impact on all of us on this committee.

Mr. LARKIN. Thank you, sir.

Mr. SHAW. I thank you.

[The statement of Mr. Larkin follows:]

STATEMENT OF ISAIAH LARKIN, PROGRAM ASSOCIATE, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES

Chairman Hughes, Mr. Sawyer, and members of the Subcommittee, as we commemorate National Police Week across the country, I am pleased to appear before you today to express NOBLE's support of House Bills 953-641-3796-4346 and Senate Bills 555 and 1762 (Section 1006), companion legislation defining several important concerns for the law enforcement community.

Just last month, NOBLE joined our colleagues at the International Association of Chiefs of Police, National Sheriffs' Association, and Police Executive Research Forum in appealing to you and the Administration for passage of federal legislation that would ban armor-piercing ammunition from the U. S. market.

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The security which bullet-resistant body armor provides is being violated, however, by the availability of armor-piercing ammunition. We can find no legitimate use, either in or out of law enforcement, for such bullets. Despite the claims of manufacturers that their bullets are for police and military use only, there has not been any attempt to legally prevent their availability to the public. These bullets are not used by either law enforcement or the military and many police agencies have expressly prohibited their officers from using them. Even with voluntary cooperation, as long as the manufacture and sale of armor-piercing ammunition remains unregulated, the possibility that a law enforcement officer will be killed or seriously wounded remains unacceptably high.

In addition NOBLE recommends your consideration of the International Association of Chiefs of Police position to the Occupational Safety and Health Administration to set regulations regarding the wearing of body armor by police officers as a basic equipment item, similar to current requirements for hard hats and steel plate shoes in the construction industry.

Finally, NOBLE believes that sufficient financial resources should be authorized to ensure enforcement of the proposed legislation, including provisions for adequate personnel and technological capabilities for testing. Such financial support should also include funds for the purchase of protective body armor by local law enforcement agencies.

We believe it is time to put all reservations aside and do all in your power to provide the maximum protection possible to the dedicated men and women who daily risk their lives for the welfare and safety of us all.

Thank you very much.

Mr. **Shaw**. Our next witness is Mr. Art Stone who is the undersheriff of Sangamon County, IL; and vice chairman, National Legislative Committee of the Fraternal Order of Police. Mr. Stone is also the first vice president of the Illinois State Fraternal Order of Police.

Mr. Stone, on behalf of the Subcommittee on Crime, I welcome you. We have received your statement and you may proceed as you see fit. Your full statement will become a part of the record.

TESTIMONY OF ART STONE, VICE CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE, FRATERNAL ORDER OF POLICE, AND FIRST VICE PRESIDENT, FRATERNAL ORDER OF POLICE IN ILLINOIS

Mr. **Stone**. Mr. Chairman and members of the subcommittee:

We appreciate the opportunity to testify before this subcommittee to express our support for H.R. 953.

The Fraternal Order of Police is the largest police organization in this country, with a membership of over 167,000 peace officers. On behalf of those members, we come before you today in hopes of successfully passing this much needed legislation.

In previous hearings we established the fact that ammunition, such as questioned in this bill, can and is purchased across the counter with little or no identification requirements.

We submitted teflon-coated armor-piercing and devastator types of ammunition that was purchased by one of our members for individual use.

We submit that we can, and did, make these purchases, and so could those people who use them for the purpose of being able to penetrate our soft body armor.

These vests are our single most effective way of protecting against death and/or injury from gunshot wounds. With the potential of ammunition like this, we negate and possibly eliminate the safety factors of the vests.

Departments, organizations, and individuals have invested large sums of money to purchase soft body armor. They were purchased and are worn for the single purpose of preventing death and/or injury.

We also take issue to the fact that we believe that the number is significantly higher than 15 percent of the officers working the actual streets that do use the soft body armor. I can state as far as my department is concerned, 95 percent of the officers on the street wear their soft body armor. The remaining 5 percent do not wear them because we do not have the money available to purchase them.

We are perplexed by the hesitation to ban this ammunition. We have talked with our various members, many who have assignments in SWAT teams and many who both hunt and target shoot.

We also have a large number of our members who shoot in competition with various weapons, and none have, nor would, use the ammunition in question for any of these activities.

If police groups do not need or use this ammunition, and the same goes with sportsmen and shooting activists, then who would be affected with the banning of this ammunition?

The only answer we can come up with is that it would be that group who would want this ammunition for the purpose it provides: to penetrate soft body armor.

The position taken by some groups is that this is not a threat to police officers and, unfortunately, with some element of pride, state that there is no record of a police officer killed with this type of ammunition while wearing a vest.

Although we are not sure that this statement is entirely correct because the reporting system does not always receive such information, we do not feel a confirmed death would change the issue being discussed.

We do not feel the question raised concerning this legislation would be any better answered with these confirmed deaths. We feel our obligation is to strive for the passage of legislation that will prevent any such deaths and/or injuries.

We strongly believe that there are qualified personnel to address the question of definition, and that we would support any responsible definition.

Our position remains simple, direct, and unchanged. There is no legitimate or practical use for ammunition such as this by law enforcement or sportspersons alike. If a life or serious injury of just one officer would be prevented by such legislation, then we have fulfilled our responsibilities and it is worthy of whatever controversy we encounter.

On behalf of myself and the members of the Fraternal Order of Police, we again thank you for the opportunity to testify before you.

Mr. SHAW. Thank you. I thank you for a very fine testimony.

Before coming to Congress, I was mayor of the city of Fort Lauderdale. I know the good work of the FOP, and your testimony will certainly be a most important part of this record and an important contribution to it.

Mr. STONE. Thank you very much.

Mr. SHAW. Thank you very much.

[The statement of Mr. Stone follows:]

AVAILABLE

Statement of Art Stone, Vice Chairman, National Legislative Committee, Fraternal Order of Police

Mr. Chairman, members of this Sub-Committee, I am Art Stone, Vice Chairman of the National Legislative Committee for the Fraternal Order of Police, and 1st Vice President of Fraternal Order of Police in Illinois.

I appreciate this opportunity to express our support for H.R. 953.

The Fraternal Order of Police is the largest police organization in this country, with a membership of over 167,000 peace officers. On behalf of those members, we come before you today in hopes of successfully passing this much needed Legislation.

In the previous hearing we established the fact that the ammunition, such as questioned in this bill, can and is purchased across the counter with little or no identification requirements. We submitted teflon-coated, armor-piercing, and devastator types of ammunition that was purchased by one of our members for individual use. We submit that if we can, and did, make these purchases, then so could those people who would use them for the purpose of being able to penetrate our soft-body armor (bullet-proof vests).

These vests are our single most effective way of protecting against death and/or injuries from gunshot wounds. With the potential of ammunition like this, we negate and possibly eliminate the safety factors of the vests.

Departments, organizations, and individuals have invested large sums of monies to purchase soft-body armor. They were purchased and are worn for the single purpose of preventing death or injuries.

We are perplexed by the hesitation to ban this ammunition. We have talked with our various members, many who have assignments in SWAT Teams and many who both hunt and target shoot. We also have a large number who shoot in competition with various weapons, and none have, nor would, use the ammunition in question for any of these activities.

If police groups do not need or use this ammunition, and the same goes with sportsmen and shooting activists, then who would be affected with the banning of this ammunition? The only answer we can come up with is that group who would want this ammunition for the purpose it provides... to penetrate soft-body armor.

The position taken by some groups is that this is not a threat to police officers, and with some element of pride, state that there is no record of a police officer killed with this type of ammunition while wearing a vest.

Although we are not sure that this statement is entirely correct (the reporting system does not always receive such information), we do not feel a "confirmed" death would change the issue being discussed. We do not believe the question raised concerning this legislation would be any better answered. We feel our obligation is to strive for passage of legislation that will prevent any such deaths or injuries.

We strongly believe there are qualified personnel to address the question of definition, and we would support any responsible definition.

Our position remains simple, direct, and unchanged. There is no legitimate or practical use(s) for ammunition such as this by law enforcement or sports persons alike. If a life or serious injury of just one officer would be prevented by such legislation, then we have fulfilled our responsibilities and it is worthy of whatever controversy we encounter.

Again, on behalf of myself and our members of the Fraternal Order of Police, I thank you for the opportunity to provide our position to this Committee.

Mr. **Shaw**. We are pleased to welcome on behalf of the National Rifle Association, Mr. Wayne Lapierre, director of the Federal Affairs for the Institute for Legislative Action of the National Rifle Association.

Mr. Lapierre, on behalf of the Subcommittee on Crime, we welcome you. We have received your statement which, without objection, will be made a part of the record, and you may proceed as you see fit.

TESTIMONY OF WAYNE LAPIERRE, DIRECTOR, FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION, INSTITUTE FOR LEGISLATIVE ACTION, ACCOMPANIED BY JIM BAKER, DEPUTY DIRECTOR, GOVERNMENTAL AFFAIRS DIVISION

Mr. **Lapierre**. Thank you, Mr. Chairman.

Mr. **Shaw**. Nice to have you with us.

Mr. **Lapierre**. Also with us today is Jim Baker who is deputy director of our Governmental Affairs Division.

I would like to submit the full statement for the record and just briefly summarize our statement.

We appreciate the opportunity to testify on behalf of the National Rifle Association in opposition to H.R. 953 as introduced by Congressman Biaggi and in support of Congressman Conte's proposed legislation, H.R. 3796.

Since the NRA testified on this identical legislative proposal over 2 years ago, there has been no documented misuse of armor-piercing ammunition.

Further, the definition contained in H.R. 953 and H.R. 641 would, in the words of the Justice Department's testimony of March 1982 given before this subcommittee, and I quote, "effectively deprive firearms owners of the use of their weapons by rendering illegal all presently available commercially manufactured ammunition."

Mr. Chairman, the specific problems with H.R. 953 and H.R. 641 are many. The definitional section which attempts to create a class of restricted handgun ammunition is severely flawed. If passed, the result would be the banning of many conventional handgun and rifle cartridges.

The U.S. Treasury Department, which would have to administer H.R. 953, has previously testified, and I quote:

> The bill . . . would . . . be likely to include other ammunition readily available in commercial channels which are not designed or intended to penetrate soft body armor. Many handguns currently produced fire rifle-type ammunition. It is likely that much sporting rifle ammunition, when fired from a five-inch barrel, would penetrate soft body armor. Many sporting rifle cartridges would end up being restricted by this bill.

Further, Mr. Chairman, H.R. 953 would be unenforceable, as the physical identification of restricted ammunition, as opposed to similar unrestricted ammunition is virtually impossible. There is no simple penetration indexing test which will define armor-piercing ammunition, or any law which would preclude ordinary nonrestricted handgun ammunition from being fired from handguns with barrels over 5 inches in length.

Additionally, the cartridge handloaders and small ammunition manufacturers, of which there are thousands, are placed in a particularly difficult position by H.R. 953. Every time an individual handloads a cartridge to be used in a handgun, he must determine, under penalty of a Federal felony, whether the cartridge is a restricted handgun bullet.

That determination can, under H.R. 953, only be made by the Secretary of the Treasury with very sophisticated equipment.

In short, Mr. Chairman, H.R. 953 is riddled with technical inaccuracies, unenforceable provisions and the legislation is drafted in response to a nonproblem.

There are three points which bear further consideration.

First, despite the claims of the bill's proponents and gun control groups, armor-piercing handgun ammunition is not readily available on the civilian market. You could ask any dealer who has recently tried to order some, and it is simply unavailable.

The manufacturers and importers of ammunition only sell their armor-piercing ammunition to police departments and do not sell to intervening FFL dealers. In other words, you cannot simply walk into your local gun shop and purchase armor-piercing handgun ammunition, as many would have you believe.

Second, it should be noted that many law enforcement organizations have similar concerns regarding H.R. 953 and similar bullet ban legislation. To quote the chairman of the Firearms and Explosive Committee of the International Association of Chiefs of Police in a letter to the president of the IACP, and I quote:

> Partial information, faulty logic and emotionalism were found to exist in public discussions, in statements within the law enforcement community, and in congressional deliberations. We urge you as president of the International Association of Chiefs of Police to suspend any official Association activities and withhold all public statements regarding 'cop killer bullets' until a rational and informed study of the problem has been conducted. This subcommittee believes that this is necessary to avoid potentially damaging legislative overreactions.

Third and finally, Mr. Chairman, 37 States allow hunting with handguns. The various State fish and game departments specify certain calibers and/or energy levels below which you are not allowed to hunt with a handgun.

Mr. Chairman, H.R. 953 would outlaw many of the cartridges mandated for big game hunting by State fish and game departments across the country.

In conclusion, NRA, as an organization, has been maligned in its opposition to this legislation. We have heard them called liars for our opposition. Yet, our opposition, really, as far as the legislation being overly broad, is no different than the position of two of the Nation's chief law enforcement agencies: the Department of Treasury and the Department of Justice.

The facts simply are armor piercing is no longer available, dealers can no longer order it, only police and military. Even if you could ban only the five rounds of armor-piercing ammunition, you are giving police officers a false sense of security because there are a lot of other cartridges out there that will still go through a vest. And in a situation on the street, I would hope not, but that could make a difference—they might believe they are safe when actually they wouldn't be.

Third, we have heard it said that NRA has said that armor-piercing ammunition is used for hunting. We have never claimed that.

Everyone knows armor-piercing ammunition is not used for hunting. Yet, the definition of armor-piercing ammunition in H.R. 953 would include a lot of ammunition that is used in hunting, and that is our point.

Finally, over on the Senate side, a police officer from Des Moines, IA testified in opposition to the bill. He was criticized, saying that he did not really represent the department. They went back to Des Moines, IA, the police officers in that department took a vote, and voted unanimously to oppose H.R. 953 in its present form.

And, finally, just last week, the Public Safety Council of New York City, after looking at H.R. 953 or a similar piece of legislation, decided not to support it, and decided to go ahead with the piece of legislation similar to Congressman Conte's legislation.

In conclusion, some proponents of this legislation want NRA to overlook all these problems. They expect us to sign off on a bill with serious technical flaws, a bill that will outlaw much conventional ammunition. And the experts are unanimous on that, they all agree the present bill, H.R. 953, will outlaw a lot of conventional ammunition.

They expect us to make possession of a lot of conventional ammunition a crime, which is going to make criminals out of a lot of honest sportsmen out there. And they expect us to sign off on a bill which will give police officers a sense of security that they are safe on the streets when in fact, even if you pass H.R. 953 or a bill banning four or five rounds, there is still going to be a lot of stuff out there that will go through a vest.

It is for these reasons, Mr. Chairman, that the National Rifle Association opposes this legislation. And we appreciate you giving us the opportunity to testify here today.

[The statement of Mr. Lapierre follows:]

STATEMENT OF WAYNE LAPIERRE DIRECTOR, FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION, INSTITUTE FOR LEGISLATIVE ACTION

MR. CHAIRMAN AND MEMBERS OF THE JUDICIARY SUBCOMMITTEE ON CRIME:

I APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF OF THE 2.9 MILLION MEMBERS OF THE NRA IN OPPOSITION TO H.R. 953 AS INTRODUCED BY CONGRESSMAN BIAGGI AND IN SUPPORT OF H.R. 3796 AS INTRODUCED BY CONGRESSMAN CONTE.

SINCE THE NRA TESTIFIED ON THIS IDENTICAL LEGISLATIVE PROPOSAL (H.R. 5437) TWO YEARS AGO BEFORE THIS SUBCOMMITTEE, THERE HAS BEEN NO RASH OF CRIMINAL MISUSE OF ARMOR PIERCING HANDGUN AMMUNITION. IN FACT, IT IS OUR BELIEF AND FEAR, A FEAR SHARED BY ALL POLICE, THAT THE HIGH-PROFILE MEDIA CAMPAIGN, ORCHESTRATED BY THE PROPONENTS OF THIS LEGISLATION AND GUN CONTROL GROUPS, IS FAR MORE LIKELY TO ENDANGER POLICE LIVES THAN ARMOR PIERCING HANDGUN AMMUNITION.

IN FACT, H.R. 953 AND ITS IDENTICAL COMPANION LEGISLATION IN THE U.S. SENATE, S. 555, ARE NOTHING OTHER THAN ONE MORE ATTEMPT TO SEPARATE LAW ABIDING GUN OWNERS AND THE NATION'S SPORTSMEN FROM THEIR FIREARMS AND AMMUNITION. TO QUOTE THE JUSTICE DEPARTMENT TESTIMONY OF MARCH 1982,

> "THE SIMPLE FACT IS THAT SOME BULLETS WITH A LEGITIMATE USE WILL DEFEAT SOFT BODY ARMOR. MOREOVER, IN CERTAIN HANDGUN CALIBERS, THE EFFECT OF A BAN ON ARMOR-PIERCING BULLETS WOULD EFFECTIVELY DEPRIVE FIREARMS OWNERS OF THE USE OF THEIR WEAPONS BY RENDERING ILLEGAL ALL PRESENTLY AVAILABLE COMMERCIALLY MANUFACTURED AMMUNITION."

The National Rifle Association does not believe that legislation which attempts to control criminal behavior through the control of firearms and/or ammunition will ever be effective. Rather, we believe that stiff mandatory penalties for misuse of firearms and/or ammunition are the only effective deterrents to criminal behavior. It is already against the law to shoot police officers; it is against the law for convicted criminals to possess firearms; yet another law will have no effect, particularly since this law is designed to solve a non-existent problem. In that regard, the U.S. Senate recently passed, by a vote of 91 to 1, a Comprehensive Crime Control bill which included just such a mandatory minimum sentence for the criminal misuse of AP handgun ammunition. The NRA commends this action and supports section 1006 of S. 1762 and Congressman Conte's bill, H.R. 3796.

Michigan presents a superb example of an effective mandatory penalty law, working despite severe economic problems in the state. Although some have criticized the law, violent crime--particularly gun-related violent crime--has plummeted since the "crime control" law went into effect. Michigan's law took effect January 1, 1977, just 38 days before the D.C.'s virtual handgun ban took effect. While D.C. crime was skyrocketing, the murder rate fell 18% in Michigan and 14% in Detroit; the robbery rate fell 18% statewide and 16% in Detroit, while rising 49% in the District and 23% overall in cities over 250,000 population. The actual number of gun-related violent crimes--according to the Michigan Department of Justice and the D.C. Police--rose 70% in

WASHINGTON, D.C. BETWEEN 1976 AND 1981 AND FELL 60% IN MICHIGAN FROM 1975-1981. AND THE PERCENTAGE OF VIOLENT CRIMES IN WHICH FIREARMS WERE USED FELL FROM 55% IN MICHIGAN IN 1975 TO 36% IN 1981, WHILE RISING FROM 40 TO 49% FROM 1976 TO 1981 IN THE NATION'S CAPITOL. UNLIKE MANDATORY PENALTIES FOR ILLEGALLY CARRYING OR POSSESSING A FIREARM, MANDATORY PENALTIES FOR FIREARM MISUSE IN CRIME GO AFTER ACTUAL CRIMES OF VIOLENCE WITH REAL VICTIMS. AND PUNISHING THE PERPETRATORS REDUCES THE LEVEL OF VIOLENCE. THIS IS ESPECIALLY TRUE OF PREDATORY CRIMES LIKE ROBBERY AND MURDER.

MR. CHAIRMAN, THE SPECIFIC PROBLEMS WITH H.R. 953 AND H.R. 641 ARE MANY. THE DEFINITIONAL SECTION WHICH ATTEMPTS TO CREATE A CLASS OF "RESTRICTED HANDGUN AMMUNITION" IS SEVERELY FLAWED. IF PASSED, THE RESULT WOULD BE THE BANNING OF MANY CONVENTIONAL HANDGUN AND RIFLE CARTRIDGES. THE U.S. TREASURY DEPARTMENT, WHICH WOULD HAVE TO ADMINISTER H.R. 953, HAS PREVIOUSLY TESTIFIED THAT, AND I QUOTE,

> "THE BILL ... WOULD ... BE LIKELY TO INCLUDE OTHER AMMUNITION READILY AVAILABLE IN COMMERCIAL CHANNELS WHICH ARE NOT DESIGNED OR INTENDED TO PENETRATE SOFT BODY ARMOR. MANY HANDGUNS CURRENTLY PRODUCED FIRE RIFLE-TYPE AMMUNITION. IT IS LIKELY THAT MUCH SPORTING RIFLE AMMUNITION WHEN FIRED FROM A FIVE-INCH BARREL, WOULD PENETRATE SOFT ARMOR. MANY SPORTING RIFLE CARTRIDGES WOULD END UP BEING RESTRICTED BY THIS BILL."

FURTHER, MR. CHAIRMAN, H.R. 953 WOULD BE UNENFORCEABLE, AS THE PHYSICAL IDENTIFICATION OF "RESTRICTED AMMUNITION," AS

OPPOSED TO SIMILAR UNRESTRICTED AMMUNITION IS VIRTUALLY IMPOSSIBLE. THERE IS NO SIMPLE PENETRATION INDEXING TEST WHICH WILL DEFINE ARMOR PIERCING AMMUNITION, OR ANY LAW WHICH WOULD PRECLUDE ORDINARY "NON-RESTRICTED" HANDGUN AMMUNITION FROM BEING FIRED FROM HANDGUNS WITH BARRELS OVER FIVE INCHES IN LENGTH.

ADDITIONALLY, THE CARTRIDGE HANDLOADERS AND SMALL AMMUNITION MANUFACTURERS, OF WHICH THERE ARE THOUSANDS, ARE PLACED IN A PARTICULARLY DIFFICULT POSITION BY H.R. 953. EVERY TIME AN INDIVIDUAL HANDLOADS A CARTRIDGE TO BE USED IN A HANDGUN, HE MUST DETERMINE, UNDER PENALTY OF A FEDERAL FELONY, WHETHER THE CARTRIDGE IS A "RESTRICTED HANDGUN BULLET." THAT DETERMINATION CAN, UNDER H.R. 953, ONLY BE MADE BY THE SECRETARY OF THE TREASURY WITH VERY SOPHISTICATED TESTING EQUIPMENT.

IN SHORT, MR. CHAIRMAN, H.R. 953 IS RIDDLED WITH TECHNICAL INACCURACIES, UNENFORCEABLE PROVISIONS AND IS LEGISLATION DRAFTED IN RESPONSE TO A NON-PROBLEM.

MR. CHAIRMAN, THREE FURTHER POINTS BEAR CONSIDERATION.

FIRST, DESPITE THE CLAIMS OF THIS BILL'S PROPONENTS AND GUN CONTROL GROUPS, AP HANDGUN AMMUNITION IS NOT READILY AVAILABLE ON THE CIVILIAN MARKET. THE MANUFACTURERS AND IMPORTERS OF AMMUNITION ONLY SELL THEIR AP HANDGUN AMMUNITION TO POLICE DEPARTMENTS AND DO NOT SELL TO INTERVENING FFL DEALERS. IN OTHER WORDS, YOU CANNOT SIMPLY WALK IN TO YOUR LOCAL GUN SHOP AND PURCHASE AP HANDGUN AMMUNITION, AS MANY WOULD HAVE YOU BELIEVE.

SECONDLY, IT SHOULD BE NOTED THAT MANY LAW ENFORCEMENT ORGANIZATIONS HAVE CONCERNS REGARDING H.R. 953 AND SIMILAR BULLET BAN LEGISLATION. TO QUOTE THE CHAIRMAN OF THE FIREARMS AND

Explosive Committee of the International Association of Chiefs of Police in a letter to the President of IACP, and I quote,

> "Partial information, faulty logic and emotionalism were found to exist in public discussions, in statements within the law enforcement community, and in congressional deliberations. We urge you as President of the IACP to suspend any official Association activities and withhold all public statements regarding 'Cop Killer bullets' until a rational and informed study of the problem has been conducted. This committee believes that this is necessary to avoid potentially damaging legislative overreactions."

Third and finally, Mr. Chairman, thirty-seven states allow hunting with handguns. The various State Fish and Game Departments specify certain calibers and/or energy levels below which you are not allowed to hunt with a handgun.

Mr. Chairman, H.R. 953 would outlaw many of the cartridges mandated for big game handgun hunting by State Fish and Game Departments across the country.

Mr. Chairman and members of the Subcommittee on Crime, the answers to the issues this hearing raises are not to be found in ill-conceived and poorly defined legislative proposals such as H.R. 953 and H.R. 641, but rather in swift and sure mandatory sentences imposed against those who would attempt or commit such abominable acts, such as those embodied in Congressman Conte's legislation, H.R. 3796.

I commend to the attention of all concerned, the minimum mandatory provisions recently passed by the Senate and H.R. 3796 as the most responsible solution to this issue.

Thank you for providing me this opportunity to testify on behalf of the National Rifle Association in opposition to H.R. 953, and in support of H.R. 3796.

Mr. **Hughes** [presiding]. Thank you very much.

First, let me just ask you for my own information, where did you get the impression on page 4 of your statement that cartridge handloaders would be placed in a very difficult position by H.R. 953?

Mr. **Baker**. If I might answer that, Mr. Chairman. Cartridge handloaders, many of them are manufacturers and obtain manufacturing licenses for reloading cartridges. If you have a manufacturer's license, no matter how small your output, you would be subject to H.R. 953.

Mr. **Hughes**. So that is if the handloader happens to be a licensed manufacturer or dealer?

Mr. **Baker**. That is correct, and many of them are.

Mr. **Hughes**. That wasn't made clear in your statement.

Let me ask you—apparently you support the imposition of sentence enhancement, or mandatory sentences, as a way to deal with those that would use armor-piercing ammunition in the commission of a felony; and you oppose any effort to ban ammunition that is armor piercing.

Mr. **LaPierre**. Mr. Chairman, we have supported the voluntary compliance agreements that the Treasury Department has signed with the manufacturers. In fact, we urge the manufacturers to go along with those compliance agreements.

The problem is when you try to write the definition into a bill, the definition is overly broad, you are going beyond those four or five rounds.

Mr. **Hughes**. You are working under the assumption it is going to be overly broad.

Suppose we can develop a definition which provides the balance, apparently you suggest you seek, and that in fact does identify that which is armor piercing, and which would not deny or ban that which is used for legitimate hunting, or sporting, or other purposes?

Mr. **LaPierre**. We still believe that the four or five armor-piercing rounds have not been a real problem. We would have to look at the legislation that was proposed.

From a practical standpoint, if you could get it down to only the armor-piercing rounds, it would not create the problem that H.R. 953 now does for American sportsmen.

Mr. **Hughes**. I think you have said a couple of things, let me see if I understand you. You suggest, on the one hand, that you can't imagine—I think you have said, and I don't want to put words in your mouth—you can't imagine our developing that kind of criteria, and for that reason you would oppose banning any armor-piercing ammunition.

Mr. **LaPierre**. We oppose an overly broad bill. We have tried to write a definition. We have been unable to do it. The voluntary compliance agreements that Treasury has signed with the manufacturers have taken the stuff off the market. We have not opposed that in any way.

We do think the whole issue is relatively a nonissue.

Mr. **Hughes**. What do you mean a nonissue?

Mr. **LaPierre**. There has never been the serious problem out there that the media or the proponents would let you believe.

Mr. HUGHES. You are not suggesting that it presents a serious threat, are you? You are not suggesting that armor-piercing ammunition provides the threat to a lot of police officers throughout this country?

Mr. LAPIERRE. I think any criminal who uses a bullet, any type of bullet, against a police officer poses a threat.

Mr. HUGHES. Yes, but the average bullet won't penetrate the body armor, and armor-piercing ammunition which has gotten a lot of attention these days, will penetrate. So the police officers all notice that in addition to all the inconvenience that these teflon vests present—they are hot, they are bulky; they are extremely uncomfortable, particularly if you are riding around in a patrol car—that in addition to all those factors is the fact that there is ammunition out there that will penetrate those vests.

Mr. LAPIERRE. In looking at this, that is part of our concern, is the fact that even if you ban only these four or five rounds, and the police officer may think he is safe as a result of those rounds being banned—and we train most of the police officers around the country; the police instructors, anyway—he may not be safe, because there will be a lot of conventional ammunition still out there on the street that will go through the vests.

Mr. HUGHES. Isn't it a worthwhile endeavor if we can save one policeman's life without inconveniencing the sportsman, the hunter, unduly? Isn't it worth saving one life? If we can save one policeman's life, isn't that a worthwhile endeavor?

Mr. LAPIERRE. That is also one of our concerns, because if you give the police officer the impression that he is safe, as a result of passing a bill through Congress saying that these four or five rounds are banned, you may give him a false sense of security that he is safe, and he may not be as careful on the street in a situation.

Mr. HUGHES. Come on now, you are not going to convince me of that. You can't convince a police officer under any circumstances he is safe.

How can one bill convince a police official that he is safe? He can go home, rest easy, that the next day he can get up and there is no risk out there?

Mr. LAPIERRE. Because the media may very well portray this thing nationwide, as they have now passed a bill which outlaws ammunition which goes through vests. And you are simply not going to do that by passing this bill in any form.

Mr. HUGHES. I suspect that, if you are as good as I think you are, you and others that train police officials, that we will be able to convey the message that this is just an assist. A vest doesn't protect you, it helps. A body armor doesn't protect a police officer from taking a shot in the head. A police officer understands that even with the body armor that is in existence it doesn't protect against all kinds of ammunition.

But if we are able to remove some ammunition that is readily available, and it saves one life, isn't that a worthwhile endeavor?

Mr. LAPIERRE. It would be, and that is why we have not opposed the voluntary compliance agreements to outlaw only the four or five rounds.

Mr. HUGHES. Well, you know, voluntary compliance is good, but a lot of people don't want to comply—there is money to be made, the economic incentive is still there. And Treasury, let's face it, doesn't have enough resources to really police that. They don't have enough resources to do a half decent job of tracing handguns today because they just don't have that capability. They just don't have the personnel to do it.

I think voluntary compliance is certainly a step in the right direction but, let's face it, that is not going to solve the problem.

Mr. LAPIERRE. You are assuming that criminals are going to buy this ammunition legally. I mean, any criminal can manufacture this type stuff, and that is why they are called criminals.

Mr. HUGHES. I don't assume anything. You know, I find that criminals will find a way to get things. But why should we make it easy for them? You want to make it easy for them. I want to make it tough. I don't want to deny the legitimate sporting purposes.

I think we can write legislation that is tight, that does what we want to do. But just listening to you, I suspect you are opposed to any effort at that. You don't want to see us do anything legislatively. You want to do it by voluntary measures.

To my way of thinking, you know, if you are really sincere, and I have to believe you are, in attempting to provide some balance so that we don't overreach—and I want to do that, I think you must know that. You know, I haven't moved as expeditiously as a lot of people would like me to move on this legislation because I have some concerns. I don't want to overreach.

I want a fair and balance standard, as do my colleagues. You haven't heard members of this committee before the television cameras suggesting that we were going to expeditiously move things.

Mr. LAPIERRE. That is correct.

Mr. HUGHES. We recognize there is a problem, and we want to do what is right. But it seems to me that if I read your position correctly, you know, you seem to be opposed to any legislative initiative aside from imposing mandatory sentences, which I am not adverse to, but that gets at the problem after the fact. I want to try to prevent some homicides.

Mr. LAPIERRE. We do, too, sir. To date, we have not seen a piece of legislation that gets at only these four or five rounds. You know, that is the basic problem. The legislation that we have been talking about is overly broad and hits a lot of conventional cartridges.

Mr. HUGHES. Let me ask you something else since I have you before the subcommittee.

I am concerned about imposing mandatory sentences. I would like to impose mandatory sentences on those who use the handgun in the commission of a crime. I strongly support that. I think it works; I think it sends the right kind of a signal to those that would use a handgun. I know the NRA strongly supports that. I think that is only part of the loaf, though.

Just within the past 3 weeks, I am aware of a situation where a person walked in to a gun shop in a neighboring State, and walked out in 5 minutes with a handgun. Very little identification was required, there was no check on that individual. They had to complete a form which, as you know, is required by regulations, BATF regulations, which requires them to answer a number of questions. The first one is, do you have a criminal record? Another question is, do you have mental infirmities? They walked out without any check.

Do you think that it is time for us to do as many States have done, and provide some reasonable period of time, 15 days, for a law enforcement agency to at least make an effort to see if we are dealing with a lunatic or a convicted felon?

Mr. LAPIERRE. In response to that, it seems a person that would commit several Federal felonies, which a person as you described has done, it would probably not be deterred by one more law, to begin with. I mean, a person who is intent on breaking the law can do a lot of things.

In regard to the waiting period, in States which have it, the crime rates have gone up rather than down.

Mr. HUGHES. But that is not relevant to the waiting period. I know in my own State of New Jersey, for instance, it has been successful. We have actually apprehended people that have applied, didn't think a check would be made, and we found that in fact they did have a criminal record. In many instances, the misuse of handguns.

We have also picked up in that process people that have serious mental histories. Who knows? We might have picked up Hinckley if we had had that type of a waiting period. Now, before the fact, not after the fact.

My question is, if we are able to, under those circumstances, deny one handgun to a potential assassin in this country, isn't that a worthwhile endeavor?

Mr. LAPIERRE. We don't believe you are going to solve a problem by doing that. Criminals are not walking into gun stores, all studies show, and buying guns legally over the counter. They are buying them illegally through the black market in cities like Washington, DC, and places like that.

The NRA has supported redirecting the Federal Government efforts away from pursuing technical violations of the law and going after those guys that are out there selling illegally.

Mr. HUGHES. You don't think we would pick up people with a mental history that way?

Mr. LAPIERRE. You may pick up one or two, but in terms of the cost——

Mr. HUGHES. Let me ask you a more basic question. Do you think we should sell handguns to people that have convictions for misuse of handguns?

Mr. LAPIERRE. No, we don't.

Mr. HUGHES. Do you think we should be selling handguns to people who have a mental history?

Mr. LAPIERRE. No, obviously not.

Mr. HUGHES. Then, how can we really find out the fact that they have a mental history, or have a conviction, unless we have some procedure in place where we can at least have some opportunity to try to glean that?

Mr. LAPIERRE. What you are doing is you are prejudging, though, by doing that, every American is guilty until presumed innocent. And we don't think that is the way you should do it.

Mr. HUGHES. I am not presuming anything. All we are asking—and I don't know of anybody that feels that a 15-day period is unreasonable. In my own State of New Jersey, I think that we are unreasonable. We take too long to process long guns. I think it is ludicrous in my State, to take 6 months to process a shotgun. Shotguns don't present problems.

So there has been some overkill with that process in some areas. But I am talking about a reasonable waiting period. How is it going to inconvenience the average person to wait 15 days so the police chief can run a check? It might be the same handgun that could end up assassinating the chief of police.

Mr. **LAPIERRE**. In some States like Alaska, you have to drive 70, 85, 100 miles to your nearest gun store. You are forcing a person to go back, make a repeated trip, and for no real reason. Waiting periods, by and large, looking at the statistics, have not been successful, in either cutting the crime rate or reducing crimes of passion.

Mr. **HUGHES**. You know, even in Alaska, they are doing a very good job of installing computers. They have very sophisticated systems today. You know, PROMIS, which I know your organization has been very supportive of over the years, has been very helpful in law enforcement organizations, and really learning a great deal more about the profile of people that have poor records.

In Alaska, you are going to have that capability, just like we are going to have it in the lower 48 States.

Why shouldn't we have the wherewithal to try to determine whether we have some nut that is buying a handgun who is only bent on killing somebody?

Mr. **LAPIERRE**. The average American gun owner and American sportsman who feels he has never committed a crime, why should he have to be checked by his Federal Government for walking into a gun store and buying a gun to go hunting or to go target shooting?

The States which have waiting periods, they simply haven't been successful in reducing either crimes of passion, or crime. The police statistics show that most crimes of passion occur between 10 at night and 2 in the morning when gun shops are closed, anyway, under the influence of drugs or alcohol.

They are also committed with the object most immediately accessible, be it a gun, a knife, a club, or a baseball bat.

Mr. **HUGHES**. We are not going to stop all the trafficking, there is no question about it, you are absolutely right. But, once again, if we are able to stop one assassination; if we are able to deny one kook a handgun, isn't that a worthwhile endeavor?

Mr. **LAPIERRE**. You are assuming that what you are proposing is going to do that, and there is a cost benefit on anything like that. It is a tremendous infringement of American citizens' rights; it is a tremendous bureaucratic nightmare. The diversion of law enforcement resources that go into that type of program might be better spent on some other program and that might save five lives.

Mr. **HUGHES**. Can I suggest something to you? I am a hunter and a sportsman, but my priorities were right, I did those things; I don't any longer.

I travel around my district which, as you know, is a very rural district. Some of the people that feel strongly about these issues came up 2 years ago to visit my district and they say all kinds of nice things about me and my position on handgun abuse. And I travel from sportsman's club to sportsman's club and, you know, I have yet to come away from a sportsman's club that didn't believe that the point I just made was not an accurate position for their posture.

And I think, if I may say so respectfully, you are out of step with your membership. I think you are out of step with the American people. It is my hope that you will review your position on a waiting period, and that you will work with us in trying to develop legislation for armor-piercing ammunition that makes sense, one that is balanced, one that does not deny unreasonably the use of legitimate ammunition—because I think we can serve the interests of this country if we work in that endeavor.

The gentleman from Florida?

Mr. **SHAW**. Thank you, Mr. Chairman.

Mr. Lapierre, I want to, first of all, say that my comments and questions are limited to the issue of the armor-piercing bullets, and I don't want what I am about to say to be interpreted as having anything to do with a Federal mandated waiting period.

I would, first of all, like to say that I believe the objectives of the NRA are correct. I would also like to say that I believe that the NRA has really led the way in keeping the constitutional protective rights to bear arms very much in the forefront.

Having said that, I would like to say I think you are wrong on this issue, and I have said so to you before. I think that when you are talking about the rights of citizens, I think it is a question of properly defining what those rights are; and I see absolutely no parallel between the right to bear arms and the right to use armor-piercing bullets anymore than the right I would have to have the hydrogen bomb in my basement.

I cannot, even having listened to your statement very carefully, I find that I cannot cross that span successfully and come out with a position that I think is correct.

However, I would say this, that I think that our ability to draft a proper bill that is going to be all inclusive but is not going to be too broad, is going to be impossible. I don't think we are going to come up with a perfect bill, nor am I looking for the perfect bill.

I do not think we are going to be able to come up with a bill that is going to ban all armor-piercing bullets or bullets that have that capability, I don't think we can do that.

But I don't think that our inability to do so is going to give to the police officers such a false sense of confidence that he is going to walk out in front of a gun that might very well have a bullet with that capability. Every police officer, or anybody who wears this type of vest, knows that he can still take a bullet in the head, or he can still get it in his arms or legs to create death if not just intense pain and have a crippling effect. So that argument—I don't think that any police officer is going to have a false sense of security and walk out in front of a bullet because we passed legislation making those bullets illegal.

But I do think that we need a lot of technical assistance in coming up with the correct bill. Mr. Hughes made reference to the fact that we are going slow in this area. I think that we need some ballistic experts up here to further refine the language.

The bill that Mr. Biaggi files depends very heavily, I think, upon the imposition of regulations.

I think that we need to do a little more work on this subcommittee, and I am hopeful that we can, and we will quickly move a bill ahead that will not be perfect but will go a long way toward filling the responsibilities that this Congress has to the law enforcement community and to the entire country.

We have been supplied here—been sitting right before the chairman are five bullets. The chairman has told me that the two on the left are armor piercing and the three on the right are not.

Mr. BAKER. They are hard to tell apart, aren't they?

Mr. SHAW. I have kept the order of these bullets, however, I dare say if I mixed them up the chairman would not be able to separate them properly again, nor would I. There must be something about these bullets that would be subject to definition.

Do you have expertise in these areas, either one of you gentlemen, that you could define what makes a bullet armor piercing? I always thought it had to have some type of a teflon coating or some type of coating.

Mr. BAKER. There are a number of factors that make any given projectile fired out of any given cartridge armor piercing. The Treasury Department, this morning, outlined some of them—bullet composition, the amount of propellant charge, the velocity which is dictated by the length of the barrel end, the propellant charge, there are any number of them—sectional density, the mass of the bullet itself.

Mr. HUGHES. Distance from the——

Mr. BAKER. Correct. Distance from the impact.

Mr. HUGHES. The way it is wrapped?

Mr. BAKER. Any number of factors. So it is not something susceptible to easy definition.

If I might add, I think that the basic reason for the impossibility of defining it succinctly as we would like, is that the coverage of the vests are limited, they are not bulletproof, they are bullet resistant. They were meant to protect against a certain threat level and not against everything that is out there. And I think that that is the basic reason for the impasse.

Mr. SHAW. Obviously, we have our work cut out for us. But I would hope that the NRA would be supportive in trying to assist us in coming up with the proper language.

I understand that you have worked on it and you consider yourself as having failed.

Mr. LAPIERRE. So far.

Mr. SHAW. However, I think that perhaps your objective was to come up with the perfect bill and we are not going to be able to, we do not pass perfect laws in this country.

Mr. BAKER. Our objective was to come up with a bill that didn't infringe on the rights of our members to use conventional ammunition.

Mr. SHAW. Well, no rights are total.

Mr. BAKER. We recognize that.

Mr. SHAW. We have to work with the real world and those who would violate what we try to pass as is near perfect laws as we can.

Mr. LAPIERRE. We are not claiming that these four or five, or eight armor-piercing rounds have a sporting application. We never have claimed that. I know it has been charged that we have but we never have. All we have said is the present definition in the bill is overly broad and would ban a lot of conventional ammunition used in hunting and target shooting.

We haven't opposed the compliance agreements; in fact, we have urged the manufacturers to go along with the Treasury's request.

Mr. SHAW. Thank you, gentlemen.

Mr. HUGHES. I thank you for your testimony, it has been very helpful.

Mr. BAKER. Thank you.

Mr. LAPIERRE. Thank you, Mr. Chairman.

Mr. HUGHES. That concludes the testimony for today. The subcommittee stands adjourned.

[Whereupon, at 12:35 p.m., the subcommittee adjourned.]

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ARMOR PIERCING AMMUNITION AND THE CRIMINAL MISUSE AND AVAILABILITY OF MACHINEGUNS AND SILENCERS

THURSDAY, MAY 24, 1984

House of Representatives,
Committee on the Judiciary,
Subcommittee on Crime,
Washington, DC.

The subcommittee met, pursuant to call, at 10:25 a.m., in room 2237, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Smith, and Shaw.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, assistant counsel; Theresa A. Bourgeois, staff assistant; Charlene Vanlier, associate counsel; and Phyllis N. Henderson, clerical staff.

Mr. Hughes. The Subcommittee on Crime will come to order.

The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with committee rule 5(a), permission will be granted unless there is objection. Is there objection?

Hearing none, permission is granted.

This morning the Subcommittee on Crime is continuing its hearings on the problems of crime in connection with firearms. Last week, the subcommittee heard testimony that was nearly unanimous in expressing concern for a serious problem that our Nation's law enforcement officers face. That is the threat of handgun ammunition that can penetrate the protective soft-body armor now worn by almost half of the Nation's police officers.

Last week, the Department of Justice was scheduled to testify before this subcommittee but it asked for a last minute postponement at the instruction of OMB, which had failed to take a position on a proposal that the Justice Department sent to the White House in January.

We are looking forward to hearing what the Department of Justice can now tell us about its research and the status of its proposal to ban armor-piercing ammunition.

Today we also want to begin to examine another critical area: the burgeoning traffic in machineguns and silencers—the tools of organized crime assassins and drug traffickers.

The number of machineguns being sold, according to the Federal Bureau of Alcohol, Tobacco and Firearms is now 60 percent more than what it was just 5 years ago.

There is mounting evidence that the system to control the traffic in machineguns is being circumvented. In 1934, Congress established a tax on each transfer of a machinegun of some $200. After 50 years of inflation, that $200 tax, intended to restrict availability of machineguns, is just small potatoes. In today's dollars, a comparable tax would be about $1,300.

Similarly, the Congress determined to limit the number of persons who would be allowed to deal in machineguns by setting a special occupational tax at $200. This is no longer a meaningful limitation. In just the last 5 years, the number of persons licensed to deal in machineguns has more than tripled.

Over the past 5 years, an average of more than 55,000 machineguns has been manufactured or imported into the United States each year.

We are just beginning to look into this problem. We want to learn the extent to which machineguns and silencers are being used in crime, and are being stockpiled by organized crime groups.

We would like to obtain estimates of the number of such weapons smuggled into the United States. How many machineguns are being used to commit robbery, murder, and extortion to provide the muscle for racketeers, and for the protection of drug traffickers?

We have been advised that BATF is seeing many conversions of semiautomatic weapons into machineguns. We would like to know how many semiautomatic weapons are being sold each year.

This morning, the BATF will explain how a semiautomatic weapon, whether a pistol, a rifle, or a shotgun, can easily be converted into an automatic weapon like a machinegun.

They will show the silencers, for which there is no legitimate use, that I am aware of, and which are used mainly for assassination, are sold in "do-it-yourself" kits to frustrate the law requiring their registration and taxation.

In 1983, the Bureau of Alcohol, Tobacco and Firearms was able to buy some 583 illegal machineguns in undercover law enforcement operations. The subcommittee needs to know how large a tip of the iceberg that number represents so that we can see the extent of the crime problem that we will have to navigate in the future.

To make policy, to budget appropriately and to protect the public, we need accurate information about the crime problem that faces us. We need to learn the details about machineguns in our Nation's crime problem and evaluate the potential danger that they present.

I look forward to hearing the witnesses today, and the Chair at this time recognizes the gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I would like to join you in welcoming today's witnesses. I think we have a very interesting hearing and one that is very necessary. I particularly want to join my friend and colleague Larry Smith in welcoming Chief Tighe. Chief Tighe's city of Pembroke Pines, Broward County, FL, lies within Mr. Smith's district. However, before redistricting, it was part of my district.

We have some real special problems in south Florida, many of which are created by the firearms that you just mentioned: silencers, machineguns, and things of this nature. This makes, I believe, the testimony that we are going to hear today from these witnesses, particularly important to Florida, and I look forward to this hearing.

Thank you.

Mr. Hughes. I thank the gentleman.

The gentleman from Florida, Mr. Smith.

Mr. Smith. Thank you, Mr. Chairman.

Let me thank you, as chairman, for scheduling this hearing today and to commend you on bringing up the continuing subject of the armor-piercing bullets—and, I, like you, waited with bated breath as to what we are going to be told today by the members of the Justice Department—but also, for scheduling a further hearing on the trafficking in machine guns and the manufacture of machine guns and silencers.

Again, south Florida has within its purview the ability to tell everybody that for all intent and purposes it is one of the major problem areas in the United States. We have more Federal licensees making more weapons in Florida. The largest single seizure of silencers made about 6 or 8 months ago by BATF and other law enforcement agencies was made in south Florida. Most of those were for export, it appears. So we do have a continuing problem in this area.

Interestingly enough, this area, being very heavily travelled by dealers in drugs, is also an area where we have seen those drug dealers relying very heavily on weapons such as silencers and on machineguns. Also, we have seen the conversion of the semiautomatics, which are licensed for manufacture into full automatics; of course, that conversion is illegal.

So, I am very happy to have had you do this today. I think the proliferation is something that really needs to be looked into. It is far and away beyond anything that we should allow to continue.

And I do want to commend to you that my good friend Chief Tighe of the Pembroke Pines Police Department was also the President of the Broward County Police Chiefs Association, is here today, and will be making some statements on these items as they are peculiarly within the province of the police enforcement agencies in the county and in the region. I am sure we will be very interested in what he has to say and I appreciate his being here. Again, thank you for scheduling this hearing.

Mr. Hughes. I thank the gentleman.

I would like at this time to introduce the Director of the Bureau of Alcohol, Tobacco and Firearms, Mr. Stephen E. Higgins, who is accompanied by Mr. Marvin Dessler, chief counsel, and Mr. Edward M. Owen, Chief of the Firearms Technology Branch.

Mr. Higgins was appointed to the Director's position in March 1983. Prior to this he served as Acting Director of BATF from 1982 until 1983, Deputy Director from 1979 until 1982, and Assistant Director for Regulatory Enforcement from 1975 until 1979.

Mr. Higgins joined BATF in 1961 as an Inspector in Omaha, NE and rapidly assumed positions of increasing responsibility until his appointment in 1975 as an Assistant Director, the youngest Assistant Director, I might say, in the Bureau's history.

Gentlemen, we welcome you to the Subcommittee on Crime. Mr. Higgins, we have your statement, which, without objection, will be made a part of the record in full, and you may proceed as you see fit.

I see that we have a vote in progress and I think it might be prudent before we even begin your testimony to catch our vote and come right back and then we will begin. We will be back in 10 minutes.

The subcommittee stands in recess for 10 minutes.

[Recess.]

Mr. HUGHES. The subcommittee will come to order.

I might say that I am sorry that it took so long. For those that might be interested, the debt ceiling bill passed, so the Republic is again saved; apparently they will not tear the Monument down, and the checks for social security will go out.

To all, thank you. Thank you.

Mr. Higgins, I am sorry that we had to interrupt.

TESTIMONY OF STEPHEN E. HIGGINS, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY WILLIAM T. DRAKE, ASSOCIATE DIRECTOR, COMPLIANCE OPERATIONS; MARVIN DESSLER, CHIEF COUNSEL; DONALD ZIMMERMAN, DEPUTY ASSOCIATE DIRECTOR, LAW ENFORCEMENT; AND EDWARD OWEN, CHIEF, FIREARMS TECHNOLOGY BRANCH

Mr. HIGGINS. Thank you, Mr. Chairman and members of the subcommittee. It is a pleasure to appear before you to discuss ATF's role in regulating the commerce in automatic weapons and silencers as provided by the National Firearms Act.

Accompanying me this morning are Mr. William T. Drake, Associate Director for Compliance Operations; Mr. Marvin Dessler, the chief counsel of the Bureau; Mr. Donald Zimmerman, the Deputy Associate Director for Law Enforcement; and Mr. Edward Owen, who is Chief of our Firearms Technology Branch.

The National Firearms Act was enacted in 1934 in response to mounting public outrage over the open warfare among the notorious organized criminal gangs of the Prohibition era.

The Bureau of ATF and its predecessor agencies have enforced the act since its inception. The act addresses the weapons which were the tools of their vicious trade: machineguns, sawed-off shotguns, silencers, and similar types of weapons.

The act has stood the test of time and is still a valuable asset to ATF special agents in their battle with the violent criminals of today.

In 1934, the primary abusers of NFA weapons were bootleggers and rumrunners capitalizing on the illicit alcohol market created by Prohibition. Murder, mindless violence, and intimidation were only a few of the hallmarks of their long reign of terror.

Fifty years later, in 1984, we find an equally, or even more vicious intimidating and ruthless criminal embracing the machinegun as the weapon of preference.

I am speaking of the drug smugglers and dealers infesting our Southern borders and major cities. These are criminals who deal in a poison which poses a far greater threat to our society than bootleg liquor may ever have approached.

Ironically, the sense of security and protection from rivals, which these criminals seem to derive from NFA weapons, is often their Achilles heel. Just as Al Capone fell victim to tax violations rather than to bootlegging charges, today's drug trafficker often falls victim to weapons charges when narcotics violations prove more difficult or impossible to establish.

Mr. Chairman, I know you are personally aware of the many successes of ATF special agents in south Florida. In fact, a congressional committee recently published the results of a survey of local police departments in the south Florida venue which asked for an evaluation of Federal law enforcement agencies operating in the area.

We were proud to learn that ATF was rated number one in terms of cooperation with State and local officers in their battle against narcotic smugglers. The NFA Act is one of the weapons which enables our agents to achieve such well deserved recognition.

It is important to stress that up to this point I have been talking about unregistered, contraband NFA weapons. I would now like to turn to the manner in which we regulate legally registered NFA weapons. These weapons are held by collectors and others; only rarely do they figure in violent crime.

In this connection, the question of why an individual would want to possess a machinegun or, more often, a silencer, is often raised. We would suggest that ATF's interest is not in determining why a law-abiding individual wishes to possess a certain firearm or device, but rather in ensuring that such objects are not criminally misused.

The regulatory scheme for dealing in or legally possessing NFA weapons and silencers is straightforward and provides safeguards which are adequate, in normal circumstances, to ensure that the firearms remain in the hands of law-abiding individuals.

Under the Gun Control Act of 1968, in order to deal in NFA weapons and silencers, an individual must be licensed and additionally must pay a Special Tax. The processing of a license application includes an NCIC check on the applicant to ensure that he has no disabling criminal history.

This same type of control extends to an individual who desires to possess an NFA weapon, device or silencer. The prospective transferor must submit an application to us to transfer and register the firearm or device to a transferee. He must include with the application the fingerprints and a current photo of the transferee, a certification by the local chief law enforcement officer that possession of the weapon would not place the transferee in violation of local law and that he has no information that the individual would use the weapon in violation of local law.

A written statement is also required from the transferee that possession of the weapon or device is consistent with public safety and is reasonably necessary.

While there are certain exceptions to one or more of the provisions I have just mentioned, for example, sales to police departments, those exceptions do not constitute a significant segment of the total legitimate commerce in NFA weapons.

I might also add that during the past 6 years, well over 90 percent of the NFA weapons manufactured in the United States were later exported, primarily to foreign military or police agencies.

In summary, I would say that the National Firearms Act provides a satisfactory regulatory framework for keeping track of legally obtained weapons possessed by responsible, law-abiding gun owners. The act also constitutes a strong tool for the ATF special agents in their battle with today's violent criminal.

That concludes my prepared testimony. We previously provided written responses to a number of questions from the committee. We would be happy now to answer any questions relating to that material or today's material that you or members of the subcommittee may have.

After we respond to your inquiries, Mr. Owen is prepared to give a comprehensive briefing on several automatic weapons and types of silencers.

Thank you.

[The statement of Mr. Higgins follows:]

TESTIMONY OF
STEPHEN E. HIGGINS, DIRECTOR
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

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The Act has stood the test of time and is still a valuable asset to ATF special agents in their battle with the violent criminals of the modern era.

In 1934, the primary abusers of NFA weapons were bootleggers and rumrunners capitalizing on the illicit alcohol market created by Prohibition. Murder, mindless violence and human misery were hallmarks of their long reign of terror.

Fifty years later, in 1984, we find an even more vicious, cowardly and amoral criminal embracing the machinegun as the weapon of preference.

I am speaking of the drug smugglers and dealers infesting our southern borders and major cities; these are criminals who deal in a poison which poses a far greater threat to our society than bootleg liquor ever approached. Ironically, the sense of security and protection from rivals, which these criminals seem to derive from NFA weapons, is often their Achilles heel. Just as Al Capone fell victim to tax violations rather than to bootlegging charges, today's drug trafficker often falls victim to weapons charges when narcotics violations prove more difficult or impossible to establish.

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That concludes my prepared testimony. We will be happy to answer any questions you or the members of the Committee may have. After we have responded to your inquiries, Mr. Owen is prepared to give a comprehensive briefing on several automatic weapons and types of silencers. Thank you.

Mr. HUGHES. Thank you, Mr. Higgins.

The Uniform Crime Reports can tell us how many homicides were committed with handguns or rifles. Do you know how many homicides were committed with machineguns?

Mr. HIGGINS. No, and I don't believe anybody gathers that kind of information, we certainly do not.

Mr. HUGHES. Do you or does any other agency in the Federal Government keep track of the number of crimes committed by machineguns?

Mr. HIGGINS. We keep track of the Federal crimes in the jurisdictions of the laws that we enforce in terms of the machineguns and other kinds of weapons in the cases that we enforce, but I don't know of anyone who maintains the records. Many of the guns are used in violation of State and local laws, and I don't believe anybody maintains any records of those—and that would be by far the largest number of those types of crimes.

Mr. HUGHES. How about the regulatory crimes, such as possession without the appropriate license? That is what you do keep track of, I guess?

Mr. HIGGINS. Yes, as an example, during the past year we completed 152 criminal cases which involved all types of machineguns, the overwhelming number being unregistered machineguns or converted weapons. I think 109 of those were cases involving machineguns, and 43 were cases where a semiautomatic weapon had been converted to a machinegun. So in the number of cases where we were involved in 1983, that was 152 cases.

Mr. **Hughes**. You had indicated in your testimony that it was rare for a machinegun held by a collector to be involved in violent crime. If you don't really have a record, how can you make that determination?

Mr. **Higgins**. Perhaps it was my fault. I should restrict that to say of the cases that we are involved in, and I will restrict it to that, it is highly unusual—and in fact, it is very, very rare—that it would be a registered machinegun or registered silencer. I would not be prepared to make that statement with respect to State and local crimes as to whether it would be or not. I think our people would have a fairly good feel of that but I couldn't give you anything specific.

Mr. **Hughes**. How many legal machineguns are there in the country?

Mr. **Higgins**. We have 194,000—well, this would include all guns, all NFA-type weapons—we have 194,940 that are registered in our files.

Mr. **Hughes**. What do you mean by the NFA weapons? What, besides machineguns, are we talking about?

Mr. **Higgins**. OK. We are talking about machineguns, silencers, sawed-off shotguns, or sawed-off rifles. We are talking about destructive devices which could be a bazooka or a cannon, or a mortar, or a Molotov cocktail, or any other weapon which is a special category which includes H&R handguns, pen guns, cane guns, and that type of special purpose weapon.

Mr. **Hughes**. Am I correct in assuming that most of those guns would be in fact machineguns?

Mr. **Higgins**. I think the big percentage—we may have that figure here if you want it.

Mr. **Hughes**. Can you give me a breakdown?

Mr. **Higgins**. Yes, sir.

Of those guns 101,000 are machineguns, so better than half are. We do have a breakdown we can provide the committee which shows shotguns, rifles, destructive devices, and other types of things. I would be happy to provide that information.

[The information follows:]

Registered National Firearms Act, firearms as of September 30, 1984

Machineguns	105,125
Silencers	13,234
Short-barreled rifles	11,442
Short-barreled shotguns	21,530
Destructive devices	16,328
Any other weapons	31,330
Miscellaneous	1,540
Total	200,529

Mr. **Hughes**. Why don't you just give us some idea now?

Mr. **Higgins**. In the categories, 101,000-plus are machineguns, silencers are 12,800, sawed-off rifles are 11,399.

Mr. **Hughes**. What was that figure again?

Mr. **Higgins**. 11,399. This is an inventory made as of May 10, 1984.

Sawed-off shotguns, 21,443; destructive devices which are the cannons, mortars, and that category, 15,166; any other weapons which are the special kinds of guns, the cane guns, pen guns, and that type of guns, 31,217; and there is roughly another 1,500 that are kind of an assortment.

Mr. HUGHES. Are most of the machineguns, which obviously comprise the great vast majority of the weapons within the NFA category, possessed by collectors? Do you know?

Mr. HIGGINS. I think that would be a fair assessment—or law enforcement agencies. A number of them are held by State and local police officers for official use.

Mr. HUGHES. Do you have a breakdown on that figure?

Mr. HIGGINS. I don't think we have our statistics broken down that way. I would be more than happy to try to do some more work on it.

Mr. HUGHES. The record will remain open if you could furnish us with that breakdown. That would be very helpful.

Mr. HIGGINS. We will try.

[The information follows:]

Possession of machineguns

Special taxpayers (39.4 percent)	41,419
Government entities (19.5 percent)	20,499
Individuals (41.1 percent)	43,207
Total	105,125

Mr. HUGHES. How many illegal machineguns do you estimate there are in this country?

Mr. HIGGINS. I wouldn't want to give you a figure, Mr. Chairman, because I would have no way of knowing. The problem is that what might be a semiautomatic weapon today, could be an illegally converted machinegun tomorrow, so you have that potential inventory, plus, if we knew about the ones that were out there, we would try to seize them. So I really don't have the figure.

Mr. HUGHES. Is there any question in your mind that there are more illegal machineguns than there are legal machineguns in existence?

Mr. HIGGINS. I don't know if anybody would want to guess on that. I honestly don't know, and I wouldn't want to say that there are, necessarily.

Mr. HUGHES. Last year, BATF purchased 583 illegal machineguns, as I understand it. Is that correct? How many illegal machineguns were purchased by other State and local law enforcement agencies, if you know?

Mr. HIGGINS. You have the correct figure for the ATF guns. We purchased 583. We seized 120 machineguns, and 4 were abandoned to us. As to the seriousness of the crime committed with the gun, often a case is proceeded against in State court—and if there is a satisfactory disposition there, we would not follow up with a Federal charge against someone. So it is probably a large number but I don't know the seriousness of the crime committed with the gun. Often a case is proceeded against in State court—and if there is a satisfactory disposition there, we would not follow up with a Federal charge against someone. So it is probably a large number but I don't think anyone has it available.

Mr. HUGHES. Of the 583 illegal machineguns that were seized, how many of those were semiautomatic weapons that had been converted to machineguns as opposed to machineguns that had been converted into the illicit market?

Mr. HIGGINS. I can give it to you in three categories. In the seized property area, 90 of the weapons that we received were the result of machinegun conversions; and the ones that we purchased for evidence in connection with investigations, 73 of those were converted machineguns, and then we had one machinegun that had been converted that was abandoned, too, so the grand total would be about 164 of those were converted guns.

Mr. HUGHES. So the vast majority were machineguns that had just been diverted into the illicit market in one form or another?

Mr. HIGGINS. For that particular year they would be.

Mr. HUGHES. What is the source of those particular machineguns that were not converted, semiautomatic weapons, where did they come from?

Mr. HIGGINS. Don, you may want to answer that, since you have had more experience in working in that particular area.

Mr. ZIMMERMAN. The source of the machineguns, really, would be very difficult to say from any one place. Some of them are military weapons that have been diverted from the military, others are machineguns that have been stolen from legitimate sources, and others are machineguns that have been manufactured but somewhere along the line were diverted from the normal commerce force. So it is not any one particular source. There are all types. Many of them are military-type machineguns, war trophies and that type of thing.

Mr. HUGHES. Do you have the capability to track the diversion of these weapons? Do you have adequate records to be able to identify the source of machineguns, to track them back to the registered owner?

Mr. HIGGINS. We can track a machinegun that we seize or find that has the serial number, obviously. We can track that back to its registered owner in the National Firearms Registration record here. For those who would have the serial number obliterated or something of that kind and we could not restore it, then we would not be able to do that.

Mr. HUGHES. Do you know how many illegal machineguns were seized by the Customs Service in smuggling last year?

Mr. HIGGINS. No, sir.

Mr. HUGHES. Do you have any idea?

Mr. HIGGINS. No, sir, I do not.

Mr. HUGHES. OK. Let me move on, if I could, briefly, to silencers. Since every time that a silencer is registered, it is registered to a particular taxpayer, why can't BATF determine how many persons legally are holding silencers?

Mr. HIGGINS. How many people legally are holding silencers?

Mr. HUGHES. Legally holding silencers.

Mr. HIGGINS. I think we would have that figure. In fact, we have the number of silencers that are registered with us and that is included in that figure that I gave you earlier. They are in there, I think, by serial number in terms—of going back and matching up those serial numbers, it is a smaller number of individuals but that would be a considerable amount of work. We have the capacity to do that but that would take a long time to do. We would have to look at every one of the number of forms—and one person, probably, I am sure, has more than one silencer; in fact, we know that. So it would be less than the number of silencers that are registered.

Mr. Hughes. Why do people possess silencers? Are they mostly collectors?

Mr. Higgins. Of the ones I have asked, obviously the same kind of questions, and basically the only answer that I know of is they are collectors. I don't know, there may be other reasons.

Mr. Hughes. Do silencers have any legitimate use?

Mr. Higgins. That is not a question that I could answer because I would guess that——

Mr. Hughes. I am just trying to find out why people want silencers?

Mr. Higgins. I am sure there are military situations where a silencer may well have a legitimate use and there may, in fact, be law enforcement——

Mr. Hughes. Putting aside the law enforcement and potential military uses, what other uses can you advance?

Mr. Higgins. I wouldn't try to advance any. That doesn't mean somebody couldn't come here and do that.

Mr. Hughes. What procedure does a person have to go through to purchase a silencer?

Mr. Higgins. If they want to buy a silencer—if, for example, that silencer would be owned by a person who is a licensed dealer and has paid the special tax, the individual who is wanting to possess a silencer, the transferor who is going to sell it to them would have to get that transferee's fingerprints, photo, file an application with us, pay the transfer fee, get a certification from the local law enforcement official in the area in which they live saying that the possession of the silencer wouldn't place them in violation of State or local law—there is one other part of that certification. And then also, a certification from the person who is receiving it saying that it is legal under State and local law and it is a public necessity. With all that information, they would file the form with us. We would make sure that it was a complete package, and do a records check on the individual who is going to get it. Then if we were satisfied that all the statutory requirements were met, we would in fact authorize the sale of that silencer and the receipt of it by the person.

Mr. Hughes. How many applications for silencers did you have last year?

Mr. Higgins. I am not sure I have that figure with me. I don't have it. I think maybe we can do our statistics in such a way that we could tell you.

Mr. Hughes. Are they mostly dealers that are purchasing silencers?

Mr. Higgins. I hate to say that without looking, it would just be a guess on my part. I would hate to say. I will provide that.

[The information follows:]

Transactions involving silencers—fiscal year 1984

Manufactured	1,819
Imported	269
Made (by individuals)	17
Registered by government entities	18
Transfers between special taxpayers	1,819
Transfers to government entities	987
Transfers to individuals	364
Transfers disapproved to individuals	5

Note.—The figures do not correlate because in many instances a silencer was transferred more than once during the year.

Mr. HUGHES. Once a silencer is approved by BATF, and sold, do you make an effort to determine whether that silencer is still in the possession of that individual?

Mr. HIGGINS. No, the same with silencers and machineguns. With 194,000 of them, we don't go out and make random checks to be sure that those people still have them. The only other times we would have reason to query that base would be is if that silencer was used in a crime of some kind, then we would get the number and trace it back to see who in fact should have had it as opposed to who does have it.

Mr. HUGHES. How difficult is it to get a silencer without going through the process you have just described?

Mr. HIGGINS. Mr. Owen will show you, I think, later today, how easy it is to make a silencer, and that would be one way to get it. But if you are asking how easy it is to get an illegal silencer, I would say it is very simple to make one yourself.

Mr. HUGHES. I understand you can make one yourself. You can pretty much make an atomic bomb if you really have the technology.

My question is how easy is it to get a silencer without going through that process, one that is already made?

Mr. HIGGINS. Go ahead.

Mr. ZIMMERMAN. As a guide, in fiscal year 1983, in an undercover capacity, we purchased 256 silencers. And if that is any guide as to their availability of ease of obtaining them, that is a figure to——

Mr. HUGHES. 256——

Mr. ZIMMERMAN. Yes.

Mr. HUGHES [continuing]. Were seized last year?

Mr. ZIMMERMAN. Were purchased.

Mr. HUGHES. Were purchased.

Mr. HIGGINS. We seized 657.

Mr. HUGHES. How many?

Mr. HIGGINS. 657.

Mr. HUGHES. How many of those were homemade?

Mr. HIGGINS. I would say the vast majority of them.

Mr. HUGHES. OK. What was the source of those that were not homemade? In other words, where did the ones that were not homemade come from?

Mr. HIGGINS. I will see if anyone knows that.

Go ahead, Ed, feel free.

Mr. OWEN. Before 1934, silencers were not regulated in the United States, and there are still a fair quantity of Maxim silencers which were produced in the teens and 1920's in existence.

Beyond that, the vast majority of suppressors that we encounter are made from kits or homemade suppressors.

Mr. HUGHES. What does it cost to get a license for a silencer today from BATF?

Mr. HIGGINS. To get the license to deal in silencers is—it is $10 to get the firearms license, it is $200 for the special tax stamp that you have to pay. That is to deal.

Mr. HUGHES. The information you have submitted reveals that an average of 55,000 machineguns were available from manufacturers-importers each year for the past 5 years. Yet, the number of transfers each year for the past 5 years was less than 20,000. What explains this enormous availability? What is happening to all those machineguns?

Mr. HIGGINS. OK. I tried to allude in my opening remarks that a vast majority of the machineguns that are made in this country are later exported, and it is more than 90 percent of those guns that are——

Mr. HUGHES. Are later exported?

Mr. HIGGINS [continuing]. Later exported, yes.

Mr. HUGHES. The gentleman from Florida.

Mr. SHAW. You mentioned the question of kits that are available. Are these kits—do they require licensing to buy a kit?

Mr. OWEN. The kit that was complete enough to assemble a suppressor would be treated in the same fashion as a functional device. In many of the kits only one portion of the parts would be available from one source and the remaining needed parts are available from a different source. In a situation like that there would be no controls on either portion of the kit.

Mr. SHAW. I see.

In your testimony, you talked about the question of the licensing, in going through the certain procedure. What type of background check do you make on the individual and what would you find in the background that would preclude you from the issuance of a license for either a machinegun or a silencer?

Mr. HIGGINS. Basically, the check that we would make would be we would get the records, the fingerprint record, and the photo, and the history—where born and date, and age, and those kinds of things—and do a criminal record check through a number of different criminal systems, NCIC and others, to determine whether or not that individual had a criminal history.

If we found anything that looked suspicious or any charges that we had some question about, we may in fact have to make a personal visit either into that area or of that applicant. But that would be unusual that we had to do that.

Beyond that, if the various certifications—well, basically they have to establish that they want to be engaged in the business, and that is fairly subjective, just holding out material for sale, could in fact be engaged in the business; but, essentially, it is a criminal check.

Mr. SHAW. Well, is the fact that someone has been convicted of a felony, is that in itself grounds to deny him a license?

Mr. HIGGINS. Yes; it sure is.

Mr. SHAW. If he or she has their civil liberties restored, would that in any way negate that act?

Mr. **Higgins**. There is a provision that an individual could apply for a relief from disability as long as it is not a crime which involved the use of a firearm, or a violation of firearms laws. But assuming that someone applied and got a relief from disability, then in fact they later could get that.

Mr. **Shaw**. How often do you in fact deny an application?

Mr. **Higgins**. I am not sure. I think we have a figure on that. We may have to provide you that because I am sure that we have that number.

[The information follows:]

AVAILABLE

RELIEF STATISTICS

FY 1984

Completed Relief Investigations:

	Granted	Denied	Other	Total
1st Quarter Oct-Dec	202	132	42	376
2nd Quarter Jan-Mar	177	106	36	319
3rd Quarter Apr-Jun	153	123	31	307
4th Quarter Jul-Sep	190	196	38	424
TOTAL	722	557	147	1426

Total Reliefs Completed in FY-1984 = 1426

Relief Applications Received:

1st Quarter - 495

2nd Quarter - 500

3rd Quarter - 508

4th Quarter - 429

TOTAL 1932

"Other" category includes those applicants who, upon completion of a field investigation, were found to be either ineligible to apply for relief or not under any Federal firearms disabilities.

RELIEF STATISTICS

FY 1983

Completed Relief Investigations:

	Granted	Denied	Other	Total
1st Quarter Oct-Dec	159	39	47	245
2nd Quarter Jan-Mar	297	142	43	482
3rd Quarter Apr-Jun	165	105	35	305
4th Quarter Jul-Sep	209	161	30	400
TOTAL	830	447	155	1432

Total Reliefs Completed in FY-1983 = 1432

"Other" category includes those applicants who, upon completion of a field investigation, were found to be either ineligible to apply for relief or not under any Federal firearms disabilities.

RELIEF STATISTICS

FY 1982

Completed Relief Investigations:

	Granted	Denied	Other	Total
1st Quarter Oct-Dec	252	114	43	409
2nd Quarter Jan-Mar	164	72	75	311
3rd Quarter Apr-Jun	145	68	76	289
4th Quarter Jul-Sep	256	140	83	479
Total	817	394	277	1488

Total Reliefs Completed in FY-1982 = 1488

"Other" category includes those aplicant who, upon completion of a field investigation, were found to be either ineligible to apply for relief or not under any Federal firearms disabilities.

RELIEF STATISTICS

FY 1981

Completed Relief Investigations:

	Granted	Denied	Other	Total
1st Quarter Oct-Dec	58	25	4	87
2nd Quarter Jan-Mar	135	81	60	276
3rd Quarter Apr-Jun	205	82	69	356
4th Quarter Jul-Sep	206	111	54	371
Total	604	299	187	1090

Total Reliefs Completed in FY-1981 = 1090

"Other" category includes those applicants who, upon completion of a field investigation, were found to be either ineligible to apply for relief or not under any Federal firearms disabilities.

Mr. Shaw. I would assume that someone who has a felony record would probably stay shy of you fellows anyway, wouldn't they?

Mr. Higgins. That is generally the case.

Mr. Shaw. And go the illegal channels rather than the legal channels.

Have you found that most of the illegally possessed machineguns are in fact semiautomatic rifles that have been converted into fully automatic firearms?

Mr. Higgins. I think that is probably right, yes.

Mr. Shaw. I have no further questions, Mr. Chairman. Thank you.

Mr. Hughes. Mr. Higgins, at the bottom of page 3 of your statement, you indicate that, "A written statement is also required from the transferee that possession of the weapon or device is consistent with public safety and is reasonably necessary."

My question is: What showing could a private individual make that would suggest that it was reasonably necessary for a private citizen to own a silencer or machinegun?

Mr. Higgins. That is a good question. Don, do you want to answer?

Mr. Zimmerman. All that is required, really, is that at this point in time is an assertion on the part of the person to whom the firearm is being transferred, that it is reasonable and consistent with public safety. And we also get a statement from the chief of police, but also a statement as to what his intended use is in terms of reasonableness.

Mr. Higgins. They could in fact say collecting as an example, and I would guess that a lot of them do say that they have it for the purpose of collecting, and we can't say that it is not.

Mr. Hughes. Would that be reasonably necessary, though? Reasonably necessary suggests some degree of security or some other standard besides collecting.

Mr. Higgins. That may be a position—that is not one that we have been able to take or we think that we could support legally.

Mr. Hughes. You indicate that you do a fairly good job of attempting to keep track of these weapons. My own view has been that BATF has been somewhat decimated over the years in its ranks and its ability to trace even handguns that have been used in the commission of a crime—that has become increasingly difficult.

I know with a number of dealers you are talking about literally hundreds of thousands of dealers around the country, that it would be unusual for BATF to make an inspection of a licensed dealer once in 10 years. My question is: How could you suggest that there is a satisfactory regulatory framework for keeping track of the weapons?

Mr. Higgins. Some of the observations you have made obviously are correct.

I think in terms of our experience in what we see in our investigations in the field and the relatively few times that we find crimes involving registered types of weapons, whether they be registered machineguns, registered silencers, or those kinds of things, maybe falsely, but at least leads us to the conclusion that the problems aren't with those guns that people have fingerprints on file and have registered their name here with the Bureau in Washington.

The problem with those guns that don't become registered are in fact contraband weapons. But that is just based on experience in terms of the investigation we make.

Mr. HUGHES. You really have no handle on contraband weapons, do you?

Mr. HIGGINS. We would have no way of knowing.

Mr. HUGHES. In other words, no handle?

Mr. HIGGINS. What might be a legal gun today, could be contraband tomorrow if somebody converts it, as you will see.

Mr. HUGHES. A dealer can have a couple of machineguns and have those machineguns stolen, and there is no penalty, is there, if he doesn't report that to the authorities?

Mr. HIGGINS. No. There is a regulatory requirement that he report it to us, but there is no penalty.

Mr. HUGHES. Suppose he does not report that, is there any penalty attached?

Mr. HIGGINS. No penalty, no.

Mr. HUGHES. Does he lose his license if he doesn't report it?

Mr. HIGGINS. No.

Mr. HUGHES. So there is, in essence, no requirement that a theft be reported?

Mr. HIGGINS. No. The only incentive would be that by reporting it, number one, it may give us an opportunity to be involved in an investigation and help that individual get it back; but also triggers and makes us more alert to that. But that is the only incentive.

Mr. HUGHES. Is there a requirement that the shippers or those that distribute, or warehouse these weapons, have to report a theft to BATF?

Mr. HIGGINS. We have a voluntary program with the major shippers who do in fact handle guns, that they report. But there is no penalty if they don't, and that is it.

Mr. HUGHES. Do you have any data on the number of weapons that have been seized that were registered weapons, stolen but never reported to BATF?

Mr. HIGGINS. For the subcommittee, and in answer to one of the questions, we had to go back and physically go through a number of reports that we had received since October. Even in those reports I think we found 36 NFA thefts that had been reported to us since the first of October until sometime this past month. I wouldn't hold out to you that that is all the NFA weapons that were seized or that we have any other figures to let you know that there have been more stolen—we don't have that.

Mr. HUGHES. Do you have a breakdown of the number of weapons that have been sold that are possessed by dealers as opposed to individuals?

Mr. HIGGINS. We have the capacity to do that. It would take some time, and if the subcommittee would like that, we will have to do that. But as you mentioned earlier, we have been short staffed and that will take some time, but we can provide it to you.

[The information follows:]

Possession of NFA firearms

Special taxpayers (28.6 percent)	57,351
Government entities (17.8 percent)	35,694
Individuals (53.6 percent)	107,484
Total	200,529

Mr. **Hughes**. Has there been a growth in the number of NFA dealers in the last few years?

Mr. **Higgins**. Yes, there has been, and the figures I have with me today go back to fiscal year 1979. I think we had 890 licensed dealers who were also special taxpayers; and that increased until in 1983, fiscal year 1983, we had 2,306 dealers.

Mr. **Hughes**. I have a figure for April 1984 of over 2,600.

Mr. **Higgins**. Yes, I see a pencil notation that that is a correct figure, 2,600.

Mr. **Hughes**. So since 1978, it looks like the number of NFA dealers have tripled.

Mr. **Higgins**. Yes.

Mr. **Hughes**. Can you explain to me what happens to those NFA weapons when a dealer goes out of business?

Mr. **Higgins**. Depending upon the type of dealer license that individual has. If the person was qualified as a sole proprietor, qualified as an individual, Steve Higgins as Steve's Guns, and I went out of business—I could maintain those guns and they would still be registered with the Government and on file, and things of that kind.

If a corporation or a partnership to other types of ownerships, if those entities went out of business, then in fact the guns would have to be disposed of to someone else because there is no longer that taxpaying entity, and that is just the legality of it.

Mr. **Hughes**. Do you have any way of keeping track of those weapons once a dealer goes out of business?

Mr. **Higgins**. All of the records remain in our file.

Mr. **Hughes**. The initial serial number is on file?

Mr. **Higgins**. Right.

Mr. **Hughes**. Under the assumption there is still a serial number on the weapon?

Mr. **Higgins**. Right.

Mr. **Hughes**. But beyond that, you have no record of any transfers, if they go out of business, or the weapons ends up in a private purchaser's hands?

Mr. **Higgins**. Obviously, any gun that is legally transferred from those people going out of business to someone else, we will get that record, we will update our file, and we will have the new record of the new individual owner. If they fail to notify us, no.

Mr. **Hughes**. With each transfer there is supposed to be a $200 tax, is there not?

Mr. **Higgins**. There are tax-exempt and taxable transfers. If it is to an individual who is not a dealer or a police department or something like that, there is a $200 tax.

Mr. **Hughes**. Do you find that in transfers, in those instances where NFA dealers go out of business, that they are in fact paying the $200 tax when they transfer to private individuals?

Mr. **Higgins**. If they are transferring other than, say, to a police department, if they were transferring to another individual, before we would approve the transfer they would have to——

Mr. **Hughes**. What if they don't notify you?

Mr. **Higgins**. If they don't notify us, they would be in this file of 194,000, but we would not be in that file looking for them. So the only other way we would find it is if later the person who gets the weapon, at that point if they haven't notified us, is in fact in possession of an unregistered title II weapon—and in fact, you know, which is 10 years or $10,000. So there may be some modification on his part not to take the gun—if it were the law, not to take the gun unless it is properly registered to them, so that is part of it.

Mr. **Hughes**. My own confusion right now is trying to identify what kind of control we have on these NFA weapons. If I understand you correctly, we don't make an effort to periodically check, we just don't have the resources to do that. There is no requirement or penalty that in fact they must report a theft to the authorities, BATF or otherwise.

Mr. **Higgins**. Only a recommendation.

Mr. **Hughes**. The only way you find out about the contraband, the diversion of legal weapons into the illicit market, is when you make a seizure, either through somebody being arrested for possessing weapons or in connection with some other crime.

Is my perception correct?

Mr. **Higgins**. I think everything you have said is correct. There is a regulatory requirement they report it, but you have accurately pointed out there is no penalty for not complying.

Mr. **Hughes**. The gentleman from Florida?

Mr. **Shaw**. Mr. Chairman, I don't have any further questions. I would like to make the observation, however, that I think it is going to be very difficult to find good compliance to the existing laws unless some penalties are in fact put in place. I can see that laxity is probably one of the chief causes that so many of these guns are put into the illegal streams of commerce; perhaps therein lies a great deal of the problem that we are facing, and one that we certainly—along with the other things that we are going to be looking at—and possibly coming up with some of the loopholes that we should certainly look to close.

Thank you.

Mr. **Hughes**. I think that, very simply what I have concluded from your testimony, and it has been very helpful to me, and I presume to the other members of the subcommittee, is that, first of all, we don't know the nature and extent of the contraband and these types of weapons. We don't know how many crimes are being committed by these types of weapons. We don't know what other law enforcement agencies are necessarily acquiring by way of seizures, because we don't keep that data. For instance, even with one of your sister agencies, Customs, you have no idea what Customs is seizing; you have no idea of those weapons that are being exported or how many of those end up back in this country through one method or another.

The only thing that we do know is that organized crime figures and drug traffickers, in particular, in some sectors of the country are pretty heavily armed; and in many instances they are the ones that have these machineguns and silencers.

Would you say that is a pretty accurate portrayal of some of your testimony—conclusions that we can draw from it?

Mr. HIGGINS. Yes, sir.

Mr. HUGHES. Thank you very much, Mr. Higgins.

Do you have a demonstration for us?

Mr. HIGGINS. Yes; Mr. Owen will be happy to do that.

Mr. HUGHES. We appreciate that.

[Demonstration.]

Mr. HUGHES. I gather this is a semiautomatic weapon that can be easily converted to an automatic weapon?

Mr. OWEN. Yes, sir, it is a silencer also.

Mr. HUGHES. A silencer?

Do you have with you a homemade silencer as opposed to a manufactured silencer?

Mr. OWEN. Yes, sir.

Mr. HUGHES. A do-it-yourself silencer?

Mr. OWEN. Do-it-yourself kit.

Mr. SHAW. I am, and I know you are, concerned about distribution of this type of information. Perhaps we could ask the courtesy and indulgence of both the television media as well as the rest of the media that is here today that they not show the details or write about the actual details so that someone could read or see what would amount to actual instructions in putting one of these type of silencers together.

Mr. HUGHES. I think that would be a good request. We will request that the television cameras just not film the demonstration.

Mr. OWEN. On the silencer kits, one source supplies two pieces of aluminum tubing which by themselves would not be able to be used. Another supplies components which are eyelets, tubes of aluminum, and a small container. These components all together are a fairly simple matter to assemble, a very effective sound suppressor. These eyelets would normally be placed inside this tube. This is a do-it-yourself kit.

Mr. HUGHES. Who do you obtain these from?

Mr. OWEN. There are any number of sources of these component parts. We find that quite frequently the tubing is acquired through a standard commercial outlet. Many of the internal parts are supplied by independent machine shops.

Mr. HUGHES. I might say for the television, there is no problem with your actual viewing the weapon, it is the conversion that you don't tape.

Are these kits advertised in national publications?

Mr. OWEN. Yes, sir, they are.

Mr. HUGHES. Do you require that they be registered before people can acquire this kind of a kit?

Mr. OWEN. Most of the suppliers of kits, they will not supply the entire kit. If they supply the entire kit it would be a silencer subject to registration. If independent sources want to supply just the internal parts, which are not regulated——

Mr. HUGHES. They handle it by saying that we can provide you with thus and so, and somebody else can provide you with this other part?

Mr. Owen. We have not seen instances where one source will identify another source for the remaining parts. Some of the larger commercial trade publications—both of the sets of components will be advertised throughout the publication from different sources. Quite often, the supplier will include an application to legally apply to the manufacturer of the suppressor.

Mr. Hughes. That looks like a cannon.

Mr. Owen. This is a very effective suppressor for a 9-millimeter handgun.

Mr. Shaw. Some of the internal parts, do they have any purpose other than——

Mr. Owen. These are specifically designed for use in a sound suppressor.

Mr. Shaw. That is specifically designed for a silencer and has no other use?

Mr. Owen. That is correct. The only off-the-shelf items are the aluminum eyelets, which in this particular design are used to absorb some of the gases.

Mr. Shaw. They are poured into the——

Mr. Owen. They are placed into this large encasement in the back.

Mr. Hughes. When some of these parts are supplied, do they provide also instructions on how to put it together with other parts?

Mr. Owen. Some of the manufacturers do. Very often in their advertising they will depict it pictorially where it is very easy to figure out.

Mr. Hughes. So even though they don't provide all the parts, they show you how to put it together with other parts?

Mr. Owen. That is correct.

Mr. Hughes. If you were to fire this from this end of the room, could you hear that shot in the back of the room?

Mr. Owen. You would hear a noise. It would be a noise that would be an everyday background noise, sort of like a book, slapping a desk.

Mr. Hughes. A muffled sound?

Mr. Owen. A muffled noise, yes, sir. If it was fired in the hallway, most likely people in the room would not even notice it.

Mr. Hughes. I see.

Mr. Owen. This is a small semiautomatic pistol we had particular problems with its conversion to full automatic fire. It can be converted in any number of ways, like blocking the motion of the trigger with a small magnet. And it will fire fully automatic. That modification takes about 15 seconds.

What we see more commonly as the weapon is quickly disassembled, modifications are made to its internal components, to a small shoulder right here, which is clipped with a pair of pliers. If that is clipped, the weapon will fire fully automatically—this long component right here, where I hold a screwdriver, hit it with a hammer, break this out, the weapon will fire fully automatically.

Mr. Shaw. Is that what you call a sear?

Mr. Owen. This is the sear portion right here, this is called a disconnect.

Mr. Hughes. So you can knock that pin out in about 2 minutes and you have got yourself an automatic weapon?

Mr. **Owen**. Yes, sir.

Mr. **Shaw**. I have never seen a weapon quite like that. Has it got a legitimate use, is it recognized?

Mr. **Owen**. This is a weapon that was produced as a pistol. It is called the RPB Industries SM11A1. It is a semiautomatic copy of a submachine gun.

Mr. **Hughes**. Who manufactures that?

Mr. **Owen**. The company that produced this weapon is no longer in business. The problems that were faced with the conversion of this led to the classification of this particular firearm as a machinegun due to its design features. The weapon is no longer in production but we still encounter them on almost a daily basis.

Mr. **Shaw**. I can imagine shooting a pistol that would be converted into an automatic it would be a——

Mr. **Owen**. The straps are here.

Mr. **Shaw**. Oh, so that is what the strap is for?

Mr. **Owen**. Yes, sir.

Mr. **Shaw**. Where was that manufactured, by the way?

Mr. **Owen**. Atlanta, GA.

Mr. **Hughes**. What caliber is that?

Mr. **Owen**. This one is .380 automatic.

Mr. **Hughes**. .380?

Mr. **Owen**. There are two other similar versions of it, a little bit larger, one a 9 millimeter and one a .42.

Mr. **Hughes**. And how many rounds would it fire?

Mr. **Owen**. The magazine holds 32 cartridges and the full automatic mode, the rate of fire is approximately 1,200 rounds a minute.

Mr. **Hughes**. That is the second bell, isn't it?

Mr. **Shaw**. Yes.

That is an interesting machine.

Mr. **Owen**. It is a semiautomatic version of the M16, which, as it comes from the factory, is quite difficult to convert. There are some specially produced components which enable a very simple conversion of this firearm. What is entailed is acquiring some M16 machinegun components and a part specifically designed to enable to convert into this weapon. This component, is referred to as an AR15 drop-in automatic sear. By installing these components, which would take about a minute, and this piece—we have created a machinegun.

This particular component has been classified as a conversion kit subject to the National Firearms Act. We still encounter these that are being homemade.

Mr. **Hughes**. Any machine shop could basically fabricate that part?

Mr. **Owen**. Yes, sir.

Mr. **Hughes**. It is the trigger that——

Mr. **Owen**. Releases the hammer for automatic firing.

Mr. **Hughes**. I see. OK.

Mr. **Owen**. That is all I have, sir.

Mr. **Hughes**. OK, thank you.

That is a vote and we are going to have to break for another 15 minutes to catch that vote.

Thank you, Mr. Higgins, for both the demonstration and for your testimony. You have been most helpful to us today.

The subcommittee stands in recess for 15 minutes.

[Recess.]

Mr. HUGHES. The Subcommittee on Crime will come to order.

Our next witness is Jay Stephens, Deputy Associate Attorney General. Mr. Stephens was named to this position just this past summer; from 1981 until that time he was Special Counsel to the Assistant Attorney General for the Criminal Division, Lowell Jensen.

Prior to his service at main Justice, Mr. Stephens was an assistant U.S. attorney for the District of Columbia for some 5 years. In 1974, he served as assistant special prosecutor on the Watergate special prosecution force. He is a cum laude graduate of Harvard Law School and graduated from Harvard College magna cum laude and Phi Beta Kappa in 1968.

Mr. Stephens, we are just delighted to have you before the subcommittee this morning. We have your prepared statement which, without objection, will be made a part of the record, and you may proceed as you see fit.

We are sorry for so many delays this morning but we have had, as you know, an inordinate number of votes today. Welcome.

TESTIMONY OF JAY B. STEPHENS, DEPUTY ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY CARY COPELAND, DEPARTMENT OF JUSTICE, AND LESTER SHUBIN, NATIONAL INSTITUTE OF JUSTICE

Mr. STEPHENS. Thank you very much, Mr. Chairman.

With me this morning are Mr. Cary Copeland, the Department of Justice, and Mr. Lester Shubin, who is with the National Institute of Justice, and has been instrumental in development of soft body armor.

I am delighted to be here and have an opportunity to discuss with the subcommittee the issue of armor-piercing ammunition and the threat which such ammunition poses to law enforcement officers and others who are engaged in enforcing our laws.

We are proud that the Department of Justice has pioneered development of soft body armor and we have promoted, with the assistance of the International Association of Chiefs of Police, the use of soft body armor for law enforcement officers. We believe that this effort has been effective. We would like to encourage that effort further and we believe it is an important initiative to ensure the safety of our law enforcement officials and officers throughout the country.

In cooperation with the National Bureau of Standards, Federal standards were developed in 1978 for means of ensuring that body armor purchased by police agencies throughout the country met minimum performance standards.

As the subcommittee may know, there are presently five body armor types beginning with type I, which is designed to protect against most common types of handgun ammunition, ranging up to type IV, which is protective hard body armor which will stop essentially armor-piercing rifle ammunition.

We expect that within the next few weeks to issue a sixth armor standard for a new type IIIA, which will be a heavyweight soft body armor capable of stopping virtually all handgun bullets except genuine armor-piercing rounds.

In short, it is fair to say I think we have been quite active in the area of body armor development for almost a decade. I am proud to say that probably as many as 50 percent of our law enforcement officers have now used body armor at one time or another.

I am also proud that, as the DuPont Corp. has noted, we probably have saved over 600 lives of law enforcement officers through the use of soft body armor.

The simple fact is that body armor saves lives. The message that people should take away from the hearing today is that the best way to protect police officers and law enforcement officers is to have law enforcement agencies acquire soft body armor for their officers and for their law enforcement officers to wear that armor.

Indeed, armor-piercing bullets are rather rare; indeed, part of this is as a result of voluntary agreements negotiated by the Department of Treasury. In fact, when we were conducting our tests to design a standard for armor-piercing ammunition, we had a difficult time obtaining armor-piercing ammunition, and we had to rely upon the Treasury Department to provide that type of ammunition.

We would like to emphasize that we believe it would be an error, potentially a fatal error, indeed, for police departments or police officers to postpone purchasing body armor due to concern over the existence of armor-piercing bullets. And if any significant number of officers decline to wear body armor available to them in the belief that armor-piercing handgun bullets make armor ineffective, we would like to discourage that because we think the best offense in this case is indeed the defensive mechanism of soft body armor.

Now having said that, I would also like to emphasize that the administration has, for the past 2 years, sought to diminish the threat that armor-piercing ammunition does pose to our law enforcement officers. We believe this is a significant issue, it is an important problem to try to address through a number of ways. One of those ways is through voluntary agreements which the Department of the Treasury has entered with a number of manufacturers and importers of the ammunition in an effort to reduce the availability of armor-piercing handgun bullets.

Second, when this subcommittee held hearings in 1982, we unveiled our proposal for legislation to establish mandatory minimum terms of imprisonment up to 5 years for the use of armor-piercing handgun ammunition during the course of a Federal crime or violence.

That proposal, which is included in the President's Comprehensive Crime Control Act of 1983 and which was approved and passed by the Senate, is presently pending before the House of Representatives and we would certainly urge speedy consideration and approval of that package by the House of Representatives.

Now, in addition to these initiatives, the Department of Justice has been working since 1982 to develop a narrow, precise bill that would ban the importation and manufacture of armor-piercing handgun ammunition which we will believe may pose an unreasonable threat to law enforcement officers.

I would like to emphasize that that task is difficult because there are a number of variables that affect penetration of armor. We have gone through a number of drafts of legislation, some of our earlier drafts were somewhat similar to House bills H.R. 641 and H.R. 953, in that they are trying to establish a test procedure using soft body armor itself.

The problem with this approach, really, was that there is no such thing as a uniform type I, type IIA, type II, or a particular layer of Kevlar that you can use as an absolute standard. Rather, there are as many types of soft body armor, really, as there are manufacturers. All approved soft body armor meets certain minimum performance levels that are required, but in reality the variations among manufacturers affect the uniformity of that soft body armor.

We also have been wanting to leave ample latitude for innovation and progress in the development of improved body armor. We have seen some substantial improvements in that area, as I noted before: we are about to approve standards relating to a new type IIIA.

We have also seen some different types of soft body armor developing in Europe. We have to leave some kind of latitude if we are working with that kind of standard for innovation in the soft body armor area.

In addition to the problem of variables and how a particular vest is constructed and manufactured, you have problems with variables in the type of ammunition that is fired. You have variables in the type of weapons, the barrel length; what the velocity is, and that may vary with respect to the type of weapon; the length of the barrel; the condition of the weapon itself; what kind of tolerances are in that particular weapon, how often it has been used.

In short, the bottom line is that different weapons using the same ammunition really produce different results. The problem is to come up with a standard that can incorporate all of these variables that we see both in the nature of the soft body armor itself as well as in the ammunition and in the weapons from which that ammunition is fired.

Addressing briefly the two bills on the House side, H.R. 641 and H.R. 953, their baseline really is in terms of a handgun with a 5-inch barrel and referencing 18 layers of Kevlar as the penetration standard. That, to us, does not completely address the problem of all the variables that I have just outlined.

Again, depending upon the type of handgun that is used, or the type of Kevlar that is chosen for a particular vest, really, these bills might end up banning a wide range of handgun ammunition that the authors of those bills really did not intend to do.

In addition, they would provide a rather broad range of discretion to the Secretary of the Treasury, which we also think would probably create a potential for some wide variations in the types of bullets that would be banned depending on the views of the particular official who was responsible for that regulation.

I would like to focus for just a moment on one area that we have worked on and which we think is indeed an effective method, and that is the mandatory minimum penalty issue that is incorporated in H.R. 3796. That is substantially similar to our mandatory minimums which were passed in the comprehensive crime package in the Senate. But there are a couple of differences which we would like to point out which we think are worthy of some note and discussion.

Both of these deal with anyone who uses or carries a handgun loaded with armor-piercing bullets. We think this reference to carrying as well as using is important because the weapon may not actually be used.

Now, on the Senate side, that carrying and use, however, is limited—the application of the mandatory minimum penalty is limited to crimes of violence, Federal crimes of violence.

On the House side it is not limited to crimes of violence but it could be any kind of white collar offense, fraud, embezzlement, or something like that.

The administration feels that it is probably preferable—indeed, it is preferable—when we are speaking in terms of handguns, ammunition, and mandatory penalties, to relate those weapons and that ammunition when we are imposing a mandatory minimum to crimes of violence.

Second, the Senate bill covers situations we believe where a defendant has indeed fired all the ammunition from his weapon, so that you don't have an unused cartridge or an unspent cartridge that you can analyze to determine whether or not that is armor piercing.

The inference from the Senate bill is that if you can recover a slug and a casing, you can work backward from there to determine whether or not that indeed is the type of ammunition which would pierce type IIA body armor and, therefore, you could impose a mandatory minimum.

The House bill does not really cover that. The inference in the House bill is that you must actually recover a piece of that ammunition, a total piece of that ammunition, and unspent cartridge.

We think the Senate version is preferable because it gives a little broader range of enforcement from the law enforcement perspective.

We think the mandatory minimum concept, when put into practice, really would be a powerful deterrent to the use of armor-piercing bullets by the criminals that are using the weapons illegally, and if enacted, would really provide an effective means of incapacitating those offenders who use particularly dangerous handgun ammunition during the course of a violent offense.

In sum, I would like to emphasize that we must do what we can to protect the lives and safety of police officers. I would like to underscore that is a primary concern, certainly, of the Department of Justice, because these are the individuals who are on the front line fighting the battle every day for the citizens of this country, to keep crime under control and to turn back the tide of crime.

The most effective thing we can do is to encourage a wider use of soft body armor for those police officers. At the same time, we recognize that armor-piercing bullets do exist and that they do pose what we believe is an unnecessary and unreasonable threat to law enforcement officers.

The administration hopes to have for the Congress in the very near future, draft legislation for your consideration, which we believe would reduce the threat which armor-piercing ammunition poses to law enforcement officers.

In the meantime, we would encourage the Congress, and particularly the House of Representatives, to enact legislation dealing with mandatory minimum prison terms for those who use armor-piercing ammunition during the course of a Federal crime of violence. We believe that would be a significant step forward toward minimizing the menace which this ammunition poses for our law enforcement officers.

Mr. Chairman, that concludes my prepared remarks. I, of course, would be happy to try to respond to any questions which the subcommittee may have.

[The statement of Mr. Stephens follows:]

STATEMENT
OF
JAY STEPHENS
DEPUTY ASSOCIATE ATTORNEY GENERAL

Mr. Chairman, I welcome the opportunity to appear today on behalf of the Department of Justice to discuss the issue of armor-piercing bullets and the threat which such ammunition poses to law enforcement officers and others who use soft body armor. We are proud that it was the Department of Justice which pioneered the development of soft body armor through what is now our National Institute of Justice. With the assistance of the International Association of Chiefs of Police, we have promoted the use of soft body armor by law enforcement agencies throughout the country.

In cooperation with the National Bureau of Standards, federal standards were developed for armor in 1978 as a means of ensuring that body armor purchased by police agencies met minimum performance requirements. There are presently five body armor standards ranging from Type I, designed to protect against the most common types of handgun ammunition, to Type IV, a hard body armor which will stop armor-piercing rifle ammunition. Within the next few weeks, we will be issuing a sixth armor standard for a new Type IIIA armor which will be a heavy-weight soft body armor capable of stopping all handgun bullets except genuine armor-piercing rounds.

In short, the Department of Justice has been active in the area of body armor development for almost a decade. As many as 50% of the nation's law enforcement officers now use body armor at one time or another, and the DuPont Corporation now estimates that such body armor has saved the lives of almost 600 police officers. Although we are concerned about armor-piercing bullets, discussions of this issue should never be taken to imply that the availability of armor-piercing handgun bullets seriously undermines the value of soft body armor. The simple fact is that soft body armor saves lives and that there is no reported case in which an armor-clad officer has been shot with armor-piercing handgun ammunition. The message that everyone should take away from these hearings, therefore, is that the best way to protect police officers is for law enforcement agencies to acquire body armor for their officers and for law enforcement officers to wear that armor. Armor-piercing handgun bullets are, by virtue of voluntary agreements negotiated by the Department of the Treasury, extremely rare. In fact, when we sought to obtain samples for testing last year, we experienced difficulty in obtaining some types of armor-piercing bullets and had to rely upon the Department of the Treasury to secure samples for test purposes. It would be a terrible and potentially fatal error if any police department has postponed purchasing body armor due to concern over armor-piercing bullets or if any significant number of officers have declined to wear body armor available to them in the belief that armor-piercing handgun bullets make body armor ineffective. Nothing could be further from the truth.

Having said that, we have for more than two years sought to diminish the threat which armor-piercing ammunition poses to law enforcement officials. As I indicated, the Department of Treasury negotiated voluntary agreements with ammunition manufacturers in 1982 to reduce the availability of armor-piercing handgun bullets. When this Subcommittee held a hearing on this subject in 1982, we unveiled our proposal for legislation to establish a mandatory minimum five-year prison term for the use of armor-piercing handgun bullets during the course of a federal crime of violence. That proposal was included in the President's Comprehensive Crime Control Act of 1983 and was approved by the Senate in February of this year as Part E of Title X of S. 1762.

In addition to these initiatives, the Department of Justice has been working since 1982 to develop a narrow and precise bill which would ban the manufacture or importation of armor-piercing handgun ammunition which poses an unreasonable threat to law enforcement officers. This task is a difficult one because of the number of variables affecting armor penetration. Our early drafts of legislation to ban armor-piercing bullets were somewhat similar to H.R. 641 and H.R. 953 in that they sought to establish a test procedure using soft body armor. The problem with this approach is that there is no such thing as Type I, IIA, or II armor or a "layer of Kevlar". Rather, there are as many different types of soft body armor as there are manufacturers: all approved armor meets the minimum performance levels required of it but, in reality, each exceeds those minimum performance levels by varying amounts. Similarly, there is no uniform "layer of Kevlar"; it varies from manufacturer to manufacturer. In fact, Type II body armor varies in construction from 11 to 26 layers of Kevlar depending upon manufacturer. We have recently become aware of a new European soft body armor which uses approximately 100 layers of very sheer Kevlar fabric to achieve Type II performance.

Of course, our desire has been to leave ample latitude for innovation and progress in development of improved body armor and we believe the performance approach to body armor standards has had this effect by leaving discretion to manufacturers to construct body armor of such materials as they see fit so long as the armor will defeat the threats it is rated to withstand. Due to this performance approach, however, it is impossible to specify a particular number of layers of Kevlar as the medium for testing penetration capability of handgun bullets.

In addition to the variables in body armor and Kevlar, there are variables in terms of the performance of ammunition when fired from different types of weapons. Barrel length, of course, affects performance; velocity increases with barrel length up to a point. There are other variables, however. For example, well made handguns manufactured to high tolerances produce greater velocity than cheap weapons or worn weapons. In short, different weapons using the same ammunition produce different results.

With respect to two of the bills before the Subcommittee, H.R. 641 and H.R. 953, these proposals suffer the defects alluded to above in that they would use a handgun with a five-inch barrel and 18 layers of Kevlar to establish what constitutes an armor-piercing bullet. Depending upon the type of handgun and type of Kevlar chosen for the test, these bills could ban a wide range of handgun ammunition with legitimate uses, a result their authors undoubtedly do not intend. In essence, these bills would confer broad discretion upon the Secretary of the Treasury creating a potential for wide variations in the number of bullets banned based upon the views of the officials in charge of enforcing the law. We do not believe, therefore, that these bills are acceptable.

Moving to mandatory minimum penalties for use of armor-piercing bullets during the course of a federal crime, H.R. 3796 is substantially similar to our proposal as approved by the Senate, Section 1006 of S. 1762. The differences between H.R. 3796 and S. 1762 illustrate some of the important aspects of our mandatory minimum bill.

First, both the Senate bill and H.R. 3796 cover anyone who "uses or carries" a handgun loaded with armor-piercing bullets; this reference to "carries" avoids the necessity of proving that the handgun was "used" in the course of the offense. The Senate bill, however, would limit application of this mandatory minimum provision to federal crimes of violence rather than federal crimes generally. We believe it would be inappropriate to invoke the mandatory minimum provision in circumstances where the defendant merely carried a handgun loaded with armor-piercing bullets during the course of a non-violent offense such as fraud or embezzlement where no force or threat thereof is involved. Therefore, we prefer the narrower Senate approach to this point.

The Senate bill also seeks to cover situations where the defendant has fired all the armor-piercing bullets in his handgun leaving us with nothing to test. H.R. 3796 implies that the ammunition must actually be tested and found to exceed the penetration limit. The Senate bill, on the other hand, would allow indirect proof of the penetration characteristics of the ammunition. If, through expert testimony, we were able to show, based upon a projectile dug from a wall and an empty ammunition casing, that the ammunition used by a defendant was KTW ammunition capable of penetrating Type IIA armor, we could, under the Senate bill, secure a minimum mandatory sentence while H.R. 3796 would not appear to allow such a result. We believe the broader coverage is preferable from a law enforcement perspective.

We believe that this mandatory minimum provision would be a powerful deterrent to the use of armor-piercing bullets by criminals and that, if enacted, it would also provide an effective means of incapacitating those offenders who use particularly dangerous handgun ammunition during the course of the commission of a federal crime of violence.

In summary, Mr. Chairman, banning armor-piercing handgun ammunition is no panacea and the most effective thing that can be done to protect the lives and safety of police officers is to encourage wider use of soft body armor. At the same time, armor-piercing bullets do exist which pose what we believe to be an unnecessary and unreasonable threat to law enforcement officers. We hope that the Administration will in the near future have draft legislation for your consideration which would reduce the threat which armor-piercing ammunition poses to law enforcement officials. In the meantime, enactment of legislation establishing mandatory-minimum prison sentences for use of armor-piercing handgun bullets during the course of a federal crime of violence as proposed in Sec. 1006 of S. 1762 would be a significant step toward minimizing the menace which armor-piercing bullets pose to the law enforcement community.

Mr. HUGHES. Thank you, Mr. Stephens.

In your prepared text, you indicate, and I quote, "We hope that the administration will in the near future have draft legislation for your consideration which would reduce the threat which armor-piercing ammunition poses to law enforcement."

You obviously mean something beyond just mandatory sentencing which you also recommend in a specific form, a narrower form advanced by the Senate legislation.

Let me make sure, first of all, that we are talking about the same thing. When you refer to armor-piercing ammunition, do you mean ammunition which in a certain weapon system and under firing conditions can penetrate certain substances, or do you refer to the design characteristics rather than the performance characteristics when you use the term armor piercing?

Mr. STEPHENS. Mr. Chairman, I think what you have suggested, really, may be the same animal from different perspectives, and that is the problem we have encountered in trying to define what armor piercing is.

Is armor piercing something that pierces *x* number of layers of Kevlar? Is armor piercing something that pierces *x* number of layers of aluminum plate when fired from a fixed fixture? Is armor piercing something that is composed of certain weight, quality of brass, a certain amount of lead, certain amount of powder? What is armor piercing?

It is one of those things that we sort of think we recognize when we see it, but when you get down to trying to develop a criminal standard that you can use in a courtroom to enforce and impose a criminal sanction, you need something that is relatively definitive and relatively specific.

What we are trying to come to grips with, is how do you actually define that category of ammunition that would indeed be armor-piercing that would in some way penetrate body armor of a particular standard or level, something that has uniform characteristics?

One way to do it is to use a certain number of fixed aluminum plates, and test-fire the ammunition from a fixture. You have uniform standards, then, to see how much velocity, how much weight, whatever, that you need to put into that particular bullet to penetrate those plates. Then you can design and work backwards from there.

Now, we have done that. The National Institute of Justice has developed that kind of test. But there are problems there. There are problems in terms of expense, there are problems in terms of cost in testing, there are problems in that you can't really distinguish between handgun ammunition and rifle ammunition. There are problems the Treasury advises us in terms of trying to enforce that kind of thing.

So you look around, and another alternative, really, is the kind of thing which the chairman also raised, is the composition. What is this bullet composed of? What kind of velocity does it have? What kind of lead weight does it have? How much brass does it have? And you look at the composition issues. That is another way of doing it.

A third way, I suppose, is the performance in terms of actually using Kevlar vests which we discussed before, and which we think has certain shortfalls.

I think it is fair to say, it is not for want of trying that we are struggling with this issue. I think we are moving towards some kind of solution.

Mr. Hughes. I am convinced that we have some technical problems. I think we can overcome the obstacles, the problems, but it is not as simple as a lot of people think it is.

Mr. Stephens. It has a nice, simple solution sound to it, and ring to it. But when you are putting it into a criminal statute, it makes it more difficult.

Mr. Hughes. I understand.

OMB has had the Justice proposal now for about 4 months, if I am correct.

Mr. Stephens. I believe somewhere in that range. I think we testified on the Senate side earlier during the course of the winter—they had the proposal sometime before.

Mr. Hughes. But Justice has gone through a number of different scenarios and developed a criteria that Justice is comfortable with. As I understand it, as a result of the work of the National Institute of Justice, the Bureau of Standards, I believe——

Mr. Stephens. National Institute of Justice, correct.

Mr. Hughes [continuing]. Perhaps may have had some participation.

My question is: What is the difficulty at OMB right now? Can you enlighten me?

Mr. Stephens. I am sure the chairman is just referring to this particular piece of legislation but——

Mr. Hughes. If you want to expand, I would be happy to hear that, too. I realize that the problem at OMB is much beyond what we can talk about today, but let's just try to limit it to this particular proposal. What is the problem?

Mr. Stephens. Mr. Chairman, I really probably am not qualified to address OMB's concerns.

Mr. Hughes. I think you are abundantly qualified.

Mr. Stephens. OMB could probably address this more explicitly. I think they genuinely want to come up with something that works. We can advise them that we think this works, but there are problems. There are problems of trying to work out a position among different enforcement agencies that does not provide for a complete across-the-board ban, that doesn't sweep too widely, that is definitive and precise. In fairness, I think OMB is genuinely trying to come to grips with this issue in a very good faith effort to try to resolve the problems as we see some of the problems, and as the Treasury Department, which has to enforce this, sees some of the problems with our test procedures. I think they are genuinely trying to come to grips with that.

I am optimistic as I indicated in my prepared remarks, that sometime in the near future we will be able to come up with a standard that is enforceable and will deal with those rounds of ammunition which are truly onerous for the safety and lives of our law enforcement officers.

Mr. Hughes. You know, this legislative year is running out very rapidly on us. As I understand it, part of the difficulty at OMB—and correct me if I am wrong—is that Treasury has one approach, Justice has another approach, and the difficulty is attempting to resolve that conflict.

Mr. Stephens. I am not sure that we have different approaches. Treasury has comments on our proposal, or our test procedures—we were tasked with the idea of developing test procedures so that we could try to come up with some precise standard. We did that. But when you try to put that test into practice—and it is Treasury's job to put it into practice, not Justice's job, primarily—it is legitimate for them to try to analyze that from a technical point of view of whether or not that legislation really is enforceable, or whether it is just there as a gloss. I don't think any of us want to see it just as a gloss. We want to put it in place so we can deal with that limited category of ammunition that poses a genuine threat.

I don't think it is fair to characterize it as any kind of dispute between the two departments.

Mr. Hughes. Let me be a little more specific. Treasury told us last week that they favor defining and presumably banning armor-piercing ammunition based on its composition rather than on its performance characteristics.

Do you think that that is the way to proceed?

Mr. Stephens. That is one way to proceed, and I think it has some substantial potential, if indeed you can define the composition and the characteristics. You may be able to define them narrowly enough that you can knock out those few types of rounds that are genuinely a threat.

Mr. **Hughes**. Didn't Justice approach that as one possibility and reject that as an alternative?

Mr. **Stephens**. I don't think it is fair to say that we had rejected that. We had worked through the performance in terms of the number of Kevlar vests and we had gone on to the NIJ test.

Mr. **Hughes**. Would it be fair to say you ran into so many obstacles that you moved on to attempting to define it by performance characteristics instead?

Mr. **Stephens**. Mr. Chairman, I don't think we really addressed, from a technical point of view or scientific point of view, the composition approach. I think it is one that does have some potential. And I think it is something that we are certainly willing to explore, and are exploring, as a way of trying to resolve this problem of coming up with something that works.

I certainly would not dismiss it out of hand as an unworkable solution or as one that is meaningless. I think it has the potential, if you can get the grid of characteristics defined appropriately for identifying a range of ammunition which you could ban the importation and manufacture.

Mr. **Hughes**. Before Justice concluded the proposal advanced by it as a result of the work of NIJ, you must have concluded that you had found a methodology that made sense—it is reasonable, that would be effective; that while not ideal, would ban certain types of ammunition that had no legitimate sporting purposes, and that would have minimum impact on that latter type of ammunition. Am I correct?

Mr. **Stephens**. Mr. Chairman, I think it is fair to say that having gone through the trial periods of developing a test at the National Institute of Justice, of trying to work up some standards, and after we reviewed those, yes, we concluded that this seems to be a viable way of approaching this problem from a definitional legal standpoint—this seemed to be a plausible solution.

Now, when you put that solution under the microscope of an enforcement agency that has to determine whether or not you can actually define this in an enforcement perspective, which Treasury was doing, there may be some flaws in that that we did not see, or did not recognize. But this is not to say that—I think the Justice approach was an approach, and is an approach, that has a certain plausibility about it for effectiveness—but I am not saying it is a perfect approach.

Mr. **Hughes**. The gentleman from Florida.

Mr. **Smith**. Thank you, Mr. Chairman.

Mr. Stephens, can a mandatory minimum sentence stop an armor-piercing bullet?

Mr. **Stephens**. No, sir, it cannot. However, it can certainly provide a deterrent to those that wish to use them.

Mr. **Smith**. I would urge you and your colleagues over at the Justice Department to think about that as you are weighing the path in which you are going to move, whether it is characteristics by content or capabilities.

I am very, very disturbed by the thrust of your whole presentation. You are doing everything you can in this presentation to avoid having to come to grips with the question of passing legislation regarding armor-piercing bullets.

I don't think you have to tell anybody in the police departments that vests are a much better way to go than barechested. I think they know that. I don't think anybody wants to stop a bullet with his chest or with a piece of armor that they are wearing.

It just seems to me that in response to the chairman's questions you have also indicated no great desire to move forward on this issue. You have been weighing it, and weighing it, and weighing it, and it doesn't seem to be going anywhere.

There has to be some ultimate decision made somewhere in the recesses of your department that is going to be a dedication to moving forward.

Suppose it took you another year, and you came up with something that was really what you consider to be valid? And suppose half a dozen police officers had died because of this armor-piercing ammunition, even when they wore armor? What would you do about that? I mean, would you just say, well, it just took us a little bit longer to define? I am very disturbed, really.

Look at your statement, Mr. Stephens. Maybe tonight when you go home, read it over. You talk about mandatory minimums. You know, in the last couple of years, a number of States have reinstituted the death penalty under the Supreme Court decision, have re-passed their laws, made bifurcated trials, et cetera. It has had some small deterrent effect but for the most part, murders are still being committed left and right, even in the States where the death penalty is an issue.

What do you do about that? Do you just throw up your hands and say, well, you know, what can you do? I mean, armor-piercing ammunition is hard to come by?

Mr. STEPHENS. I think, Mr. Smith, you have made a rather effective argument on a broader range of issues, on the omnibus crime package, for Congress to move forward on all of those issues.

Mr. SMITH. Mr. Stephens, do me a favor, do not propagandize. You know, every time somebody comes in here they propagandize about the omnibus crime package. I went to a hearing on narcotics yesterday and they were talking solely about narcotics. And the man who came here from the Vice President's Task Force talked about passing the Omnibus Crime Control bill which doesn't have any narcotics information in it.

Let's not propagandize what the President wants to do. Let's talk about what is before us: The armor-piercing bullet. That is a very, very sore point with law enforcement personnel around this country, probably close to half a million people dedicating their lives to law enforcement.

This is a new phenomenon, and I agree with you that it has some technical obstacles to surmount. But it seems to me that there is no dedication on the part of your agency of the Justice Department to move forward with some kind of protection for the police officers.

You are saying that the law enforcement personnel want a perfect bill. They don't want a perfect bill. What they want is something that they can attempt to enforce. They don't have any say over how the courts are going to enforce it. That is your role.

But you are holding back. They don't have anything to work with; and the bottom line is that they are at risk every day.

Mr. STEPHENS. Mr. Smith, it would be a worse tragedy to pass a bill that is completely ineffective in giving law enforcement a false sense of security and to pass a piece of legislation that is indeed unworkable. I can assure you that it is important that we encourage people, law enforcement officers, to wear soft body armor.

I think the statement that I made this morning was designed to encourage police officers to do that. If we don't encourage them, I think we are being negligent in our duty to advise them what really is the most effective method of protecting against handgun ammunition.

Mr. SMITH. Don't you think they know that already? Is there a law enforcement officer in the United States you think hasn't yet understood the fact that if he is wearing a flak jacket and he gets shot, the chances are better that he will survive than if he is not?

Mr. STEPHENS. There are a number of law enforcement officers that don't wear them on a daily basis, sir.

Mr. SMITH. That is not what I asked. What I asked is, don't you think that law enforcement officers know that?

Mr. STEPHENS. I think we are talking about the same thing, to encourage them to use them, but I also want to emphasize that the Department of Justice has been working on this problem.

I think it is an unfair criticism, really, to say that we have not been trying to work out some way of dealing with a limited category of ammunition. Now, you may know something that I am not aware of, but we are not aware of, as of yet, of a police officer who was clad in soft body armor actually being fatally injured, wounded, through that body armor, with any kind of ammunition.

That does not mean, however, that——

Mr. SMITH. Other than armor-piercing ammunition.

Mr. STEPHENS. Are you aware of a situation in which——

Mr. SMITH. My understanding is that two police officers have died by the use of armor-piercing ammunition.

Mr. STEPHENS. They were shot in the head, they were not shot through the armor.

That does not excuse, however, not moving forward expeditiously.

Mr. SMITH. Let me ask you, by the way, on that point, because you made an issue of the fact that mandatory minimum would be a deterrent.

Those criminals that shot the police officers, were they, even without the existence of a mandatory minimum penalty, were they breaking the law by—carrying the firearm, discharging the firearm, assault, and murder?

Mr. STEPHENS. Of course.

Mr. SMITH. Did that deter them from using that weapon?

Mr. STEPHENS. Presumably not.

Mr. SMITH. Then, do you think that the mandatory minimum sentence, because they had armor-piercing ammunition in the weapon rather than regular ammunition, would have deterred them any more from using the weapon?

Mr. STEPHENS. It would have the same deterrent effect that any of our criminal statutes have, presumably, sir.

Mr. SMITH. Well, there were about four crimes you could have charged somebody who murdered a police officer with. None of them stopped those two police officers from being shot. What makes you think that a mandatory minimum is going to have the effect of doing it? That is why I asked the facetious question of whether or not a mandatory minimum sentence will stop an armor-piercing bullet. The answer is it won't. The law won't, nor will the law deter people from doing it because the law doesn't do that now.

Let me just say that in my estimation, if you have a situation where every police officer—not that I say they shouldn't, because they should—but if every police officer begins to wear armor on their bodies, it would seem to me that at some point in time the criminal element, which always seems to be pretty far advanced technologically, some element of it anyway, will take to using armor-piercing more than they are now.

I am a little surprised at your statement that there are people that you had that couldn't find armor-piercing ammunition. In my own area, it is very easily obtainable.

Mr. Stephens. I think our experience has been——

Mr. Smith. We will send you a list of places if you want to go buy some. We have no problem about that. Plenty of gun shops, I will tell you, in Broward County will sell you armor-piercing ammunition.

Mr. Stephens. I think you will find it difficult to go out and buy armor-piercing ammunition over the counter, sir—unless the Treasury Department has worked out, they have reported they have worked out voluntary agreements. And the only armor-piercing ammo we have found—well, I shouldn't say the only—is 1950 Czech ammunition that has come in and is still in circulation. But the ease of finding newly manufactured imported ammunition that is truly armor piercing, I think is probably difficult.

Mr. Smith. On the open market?

Mr. Stephens. On the open market, that is correct.

Mr. Smith. The criminal element generally got its handguns from the illicit market I would imagine that the bullets would be as readily available on the illicit market as the handgun was.

Mr. Stephens. The problem, as you are defining it, is the same problem which you discussed in the previous testimony regarding illicit firearms of other kinds.

I mean, how do you stop, or how do you go out and regulate and deal with the ammunition or the weapons, the machineguns, or whatever, that are in the illicit market?

Your point is well taken in that it is an issue that needs to be addressed and it needs to be addressed expeditiously. I hope that I have conveyed in my testimony that we are doing that. We are doing that as much as we possibly can, and I think we are clearly moving to a resolution of this problem.

When I said in the near future, I meant in the near future. I can't predict exactly when it would be but I would certainly hope and trust that it is sometime, certainly, during the course of the next few weeks and during this session.

Mr. Smith. That is the first heartening thing I have heard, Mr. Chairman. If we are talking about the next few weeks, that would certainly be of great benefit to this committee, which would like to move forward with your cooperation, but needs to move forward in any event.

Thank you.

Mr. **Hughes**. Thank you, Mr. Smith.

I just have a couple of other questions, if I might.

Mr. Stephens, with regard to the Treasury, we had the Treasury before us about a week ago on armor-piercing ammunition. I indicated to the Treasury that the subcommittee is going to do its very best to move ahead with legislation in this Congress.

It is my hope that in the next week to 10 days, you will be able to clear something through OMB. But we are privy, you know, to your proposal. It would be far better for us to work with Justice and Treasury in developing the very best legislation we can develop.

Mr. **Stephens**. We appreciate that, and we certainly encourage that, and will be most happy to work with the subcommittee.

Mr. **Hughes**. Like Mr. Smith, I was kind of intrigued by your suggestion that what we can do is pass the omnibus crime bill. I just wondered if you had some specific provision in there that would be relevant to what we are talking about?

Mr. **Stephens**. I think that we indicated the mandatory minimum penalties are in that crime package.

Mr. **Hughes**. I think that both you and I know that Mr. Smith's analysis of the additional deterrents is probably pretty accurate, that there is a great deal of deterrence now and it doesn't work.

We don't have to wait for new statistics. I think sentenceing enhancement is going to help but I don't think it is going to provide the kind of deterrent we are looking for and it is not going to protect lives in the final analysis, and that is what we are trying to do.

We don't need to have 2 officers, or 10 officers, or 15 officers killed by armor-piercing ammunition before we do our duty and attempt to try to prevent those homicides.

Mr. **Stephens**. I agree with the chairman that this is a problem that we are trying to face. It is a problem we are trying to address. The Department of Justice has been, I hope, exceedingly supportive of law enforcement—State, local, and Federal. And we are reflecting that support in our efforts on this type of legislation.

Mr. **Hughes**. I know that you have had some technical difficulties, and that is the reason we have been rather cautious in moving forward on this bill. When we first took testimony, it sounded like a very simple issue to deal with. It wasn't until we got into the issue that we determined that there are some really legitimate concerns, technical concerns, that we have to address.

I am also a pragmatist, I also know there are some political concerns that have to be addressed. Let's solve the technical problems and then move on. The political problems are not going to go away, and neither is this subcommittee in attempting to move ahead legislation until we have something that is rational that we can embody into legislative form that makes sense, that will save lives.

Thank you very much.

Mr. **Stephens**. Thank you, we appreciate it.

Mr. **Hughes**. Our next witness is Mr. John H. Tighe, chief of police of Pembroke Pines, FL. Chief Tighe has served Pembroke Pines as chief for some 6 years. I understand that Chief Tighe was the captain of the police force of the city of Miami and, in fact, served in that capacity in Miami for about 24 years.

Chief Tighe is president of the Broward County Chiefs of Police Association. He is a leader in the area of firearms policy and is the chairman of Sensible Citizens for Gun Management.

As a result of that leadership, I understand that Broward County recently took steps to provide for a 10-day waiting period before one can consummate a handgun purchase to provide time to assure that the purchaser has not been convicted of a crime.

Now, even more importantly, I am told by my good friend Larry Smith, that you are a great law enforcement officer with a distinguished career, and we are just delighted to have you with us today.

TESTIMONY OF JOHN H. TIGHE, CHIEF OF POLICE, PEMBROKE PINES, BROWARD COUNTY, FL

Chief **Tighe**. Thank you very much, sir. It is an honor to be here.

I have come to you on two different items and, with your permission, sir, I would make an opening speech on the second one after we finish the first. The first, of course, is the use of machineguns.

It was a novelty for me to sit in the back of the room when the ATF witnesses were speaking. I concur with them, they are one of the highest regarded Federal agencies, as far as local police departments are concerned.

Our trouble in south Florida is a case of oops. And the oops is turning into a war. If you take the Prohibition days that AFT spoke about, if you take a John Wayne movie of the marines going up the hill with tommy guns, add a little bit of the wild west finale where everybody is shooting at everybody, and at times Dade County, Broward County, and Palm Beach County, resemble part of that all put together.

There is within our district more machineguns and more machinegun deaths, than any place else in the United States. Currently, we don't believe it is a national problem. But just as the Vice President's task force improves its efficiency, we see narcotics going into the different Gulf States and Atlantic States, so, too, do we believe that this machinegun policy will also spread throughout the country.

We do not have good, solid statistics, as ATF explained to you. In Dade County, we have something like 26 individual municipalities; in Broward County we have 28 municipalities. But we can bring forward statistics that we have gathered to the best of our ability. I quoted 34 deaths by machineguns in a 4-year period.

I could tell you that between ATF, the FDLE and the individual police departments, in the past 4 years, almost 1,000 machineguns have been confiscated. Those machineguns over and over again are the MAC 10's. The MAC 10 is the weapon that was showed to you. It was the last weapon that he demonstrated. The one that he has and the one that he demonstrated to you was about this long, about 8 or 9 inches long.

The ones I have seen are similar in size but weigh a greater amount. They were the original MAC 10's. That particular gun is sold in a soft material kit. The barrel of that gun and one clip, which will hold 40 pieces of ammunition—that weapon, when fully automatic, expends 16 shots every second.

When you take that and then the soft cover that I mentioned earlier which is made of the same material that our armor vests are. They have large handles that you can put over your body. You have a very effective weapon and a very effective armor vest for yourself.

This particular weapon is seen 90 to 95 percent of the time in the State of Florida in narcotics deals, with narcotics people. But we are now seeing a diversion from that.

Just this week, two juveniles were picked up in Broward County in a burglary with a MAC 10. They had secured that MAC 10 by killing a person, or a couple, in Dade County, strictly to get that MAC 10—juveniles with a MAC 10 fully automatic weapon.

In Broward County, we currently have an extortion, what we believe is an extortion to try to put abortion clinics out of business. In our city, our clinic was shot up—some 37 rounds of ammunition were fired into that store. All, we believe, from a MAC 10 with a silencer—because within the block there was a shopping center and the residents behind it did not hear the noise in the midmorning hours.

So we come to you and we say, yes, ATF is doing a good job. But they missed on one particular weapon. Because of the absence of that weapon we are now having problems in south Florida.

We have a tape here that a local television channel, 7, loaned to us. It was an investigative reporter. The tape shows where a MAC 10 was used against police officers and killed indiscriminately their own dope dealers. For your information, since there was reference to it, there was a purchase of 14 teflon bullets for $15, made by an investigative reporter.

I see we might have the equipment. It is a 15-minute tape, you might want to look at later.

Another problem that is beginning to develop resulted in a murder within my city. Mr. Smith will tell you, my city goes from Hollywood—everybody knows where Hollywood, FL, is, nobody knows where Pembroke Pines is. We are on the western part of Hollywood, and we go all the way to the Everglades. Consequently, halfway through our city, people think they are in the Everglades and they dump some bodies there for us to recover.

We currently are working on a murder with a female who was arrested with a member of the outlaw gang who was bringing to south Florida two MAC 10's with silencers, and was going to trade them for cocaine.

The silencers we spoke to you about, or that were addressed, were made by MAC—M-A-C, it is a Military Armor Corp. Later, at Federal orders, they were ordered to cut them up and scrap them, and we discovered silencers that were being welded together again from the parts of those.

The committee asked ATF how easy it is to get these type of weapons—silencers and everything else. I have a copy of a trading manual that is within the trade, gun trade, and it is some 235 pages long.

Mr. HUGHES. What is the name of the publication, Chief?

Chief TIGHE. The publication is known as Shotgun News. It was established in 1946 and it is published three times a month. I do have to say, within it it does have conversion kits, but it says must be federally licensed.

But there are some, for instance, all I had to do was go to page 2, and I find an advertisement for a MAC 10 open bolt semi to full automatic in 5 seconds. This MAC 10 can be converted back to a semi-automatic in 2 seconds. It also comes with a $28 guarantee.

This is the weapon that we are talking to you about.

Mr. HUGHES. Where do you write to obtain the kit? Does it have an address?

Chief TIGHE. Yes, sir, it does.

Mr. HUGHES. Can you give me the city?

Chief TIGHE. Waupun, Wisconsin.

Also on page 2, a silencer plan makes improvised silencers from household materials, all firearms. That is on page 2. So it is not hard to find the parts that we are talking about today.

A third place that we have found silencers are where parts are sold as was explained to you by ATF. It is illegal to own a full part. To own part of the parts, is not illegal. At these gun shows, one part might be sold at this table, and the man will be gracious enough to direct you to that table where the second part might be bought. He in turn, might direct you to the third table, where the third part might be purchased. That is in addition to the machine shop and the homemade silencers that we also speak about.

This is what we wanted to bring before the subcommittee. ATF is doing a wonderful job, we endorse them. But this is one that got past them.

[The statement of Chief Tighe follows:]

JOHN H. TIGHE

INTRODUCTION

RETIRED AS CAPTAIN OF POLICE AFTER 24 YEARS OF SERVICE CITY OF MIAMI BEACH.

CHIEF OF POLICE, CITY OF PEMBROKE PINES, BROWARD COUNTY, FLORIDA SINCE 1978.

PRESIDENT OF BROWARD COUNTY CHIEFS OF POLICE ASSOCIATION.

SECRETARY OF THE SOUTHEAST TRI-COUNTY CHIEFS OF POLICE, WHICH REPRESENTS THE CHIEFS OF DADE, BROWARD AND PALM BEACH COUNTIES.

CHAIRMAN OF "SENSIBLE CITIZENS FOR GUN MANAGEMENT", A POLITICAL ACTION GROUP WHO WORKED TO PASS A REFERENDUM THAT CALLS FOR A 10 DAY WAITING PERIOD TO DO A CRIMINAL BACKGROUND ON PERSONS BUYING HANDGUNS.

I'M HERE TO PRESENT TWO DIFFERENT PROBLEMS ON LAW ENFORCEMENT FOR THE COMMITTEE TO EXAMINE AND, HOPEFULLY, TO TAKE ACTION IN ONE CASE. BOTH PROBLEMS ARE RELATED TO GUNS AND ARE (1) MACHINE GUNS AND SILENCERS, AND (2) FEDERAL BUREAU OF INVESTIGATION LIMITS ON USE OF THE NCIC.

THE PROBLEM OF MACHINE GUNS AND SILENCERS CURRENTLY IS NOT A NATION WIDE PROBLEM, BUT IT COULD DEVELOP INTO ONE AS THE EFFICIENCY OF THE VICE PRESIDENT'S TASK FORCE INCREASES IN SOUTH FLORIDA. DON CONROY, SPECIAL AGENT IN CHARGE OF THE UNITED STATES TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS IN THE MAIMI DISTRICT, STATES THAT SOUTH FLORIDA HAS MORE TRAFFIC IN MACHINE GUNS AND SILENCERS THAN ANY OTHER PART OF THE UNITED STATES. THIS DEPENDENCY ON THE MACHINE GUN WILL SPREAD AS INCREASED NARCOTICS SMUGGLING REACHES OTHER ATLANTIC AND GULF STATES.

THE THREE COUNTIES OF DADE, BROWARD AND PALM BEACH HAVE TWO UNIQUE INGREDIENTS OTHER STATES DO NOT. THESE INGREDIENTS ARE THE MURIEL CRIMINAL REFUGEES AND THE ABILITY OF COLUMBIANS TO BLEND INTO OUR VAST SPANISH SPEAKING COMMUNITY.

THE FACTS AND FIGURES I QUOTE TODAY ARE FROM DADE AND BROWARD COUNTIES. AT TIMES, THEY REPRESENT THE ONLY FIGURES AVAILABLE, INSTEAD OF FULL FIGURES, BECAUSE OF THE MANY POLITICAL SUBDIVISIONS IN OUR DIFFERENT COUNTIES. IN THE PAST FOUR AND ONE HALF YEARS, THIRTY-FOUR MURDERS HAVE BEEN COMMITTTED WITH MACHINE GUNS. BREAKDOWN BY YEAR SHOWS:

1980	4 CASES, 5 DEATHS
1981	9 CASES, 17 DEATHS

1982	2 CASES, 5 DEATHS
1983	3 CASES, 4 DEATHS
1984	3 CASES, 3 DEATHS

THESE DEATHS IN NO WAY REFLECT THE TRUE TERROR CAUSED BY MACHINE GUNS WHEN THEY ARE USED TO ENFORCE SILENCE, COLLECT DEBTS AND GUARD NARCOTIC SHIPMENTS OR CACHES.

I HAVE A TAPE AVAILABLE TO SHOW THE DIFFERENT TIMES LAW ENFORCEMENT OFFICERS BECAME VICTIMS WHERE MACHINE GUNS WERE USED. MANY OTHER CASES FAILED TO REACH THE NEWS MEDIA. FOR EXAMPLE; ON MAY 21, A MIAMI BEACH POLICE OFFICER STOPPED A FEMALE DRIVER FOR A TRAFFIC VIOLATION. HER ACTIONS AS HE APPROACHED HER VEHICLE CAUSED HIM TO BECOME SUSPICIOUS ENOUGH TO DRAW HIS WEAPON. AFTER HER ARREST, A FULLY LOADED MAC 10 WAS FOUND ON THE SEAT BESIDE THE DRIVER. SHE HAD USED IT AS A DEFENSIVE WEAPON IN A DOPE TRANSACTION THAT HAD TAKEN PLACE MINUTES BEFORE THE TRAFFIC STOP.

ONE METHOD TO DETERMINE THE SIZE OF THE PROBLEM AND HOW THE PROBLEM IS DIVERSIFYING IS TO READ THE LOCAL NEWSPAPER, THE MIAMI HERALD. THESE ARTICLE'S I HOLD ARE FROM THE MAY 19 EDITION OF THAT PAPER. ALL DEAL WITH MACHINE GUNS. ONE REPORTS TWO TEENAGERS BEING ARRESTED WHILE BURGLARIZING A HOME IN BROWARD COUNTY. IN THEIR POSSESSION WAS A MAC 10 MACHINE GUN WHICH THEY HAD ACQUIRED BY MURDERING A LATIN COUPLE IN DADE COUNTY.

ANOTHER REPORTS A MEMBER OF THE OUTLAW MOTORCYCLE GANG PLED GUILTY TO POSSESSING TWO MACHINE GUNS AND SILENCERS.

THIS CASE IS OF INTEREST TO MY CITY, AS THE GIRL ARRESTED WITH HIM, WHO ASSISTED IN TRANSPORTING THE WEAPONS FROM LOUISVILLE, KENTUCKY, WAS FOUND MURDERED AND BURNED IN THE WESTERN PART OF PEMBROKE PINES. INFORMATION RECEIVED DURING OUR INVESTIGATION SHOWED THESE MACHINE GUNS AND SILENCERS WERE TRANSPORTED SO AS TO BE TRADED FOR COCAINE.

THE THIRD NEWS ARTICLE IS OF THE ARREST OF A DRUG SMUGGLER FOR TWO MURDERS COMMITTED IN A LIQUOR STORE SHOOT-OUT IN 1979. THAT SHOOT-OUT IS PART OF THE TAPE THAT WILL BE SHOWN.

WITHIN THE CITY OF PEMBROKE PINES IN THE LAST YEAR, WE HAD TWO MURDERS COMMITTED BECAUSE OF, OR WITH MACHINE GUNS, AND A STOREFRONT SHOT OUT BY A MACHINE GUN IN AN EXTORTION ATTEMPT. A SILENCER WAS PROBABLY USED IN THE STOREFRONT INCIDENT, AS THE RESIDENTS AND SHOPPERS FAILED TO HEAR ANY SHOTS FIRED.

LOCAL ENFORCEMENT

BOTH DADE AND BROWARD COUNTIES HAVE SUPERB CRIME LABS. CITIES WITHIN THESE COUNTIES SEND SEIZED WEAPONS TO THE LABS WHEN IT IS BELIEVED BY THE MUNICIPAL OFFICER THE WEAPON MIGHT HAVE BEEN USED IN A PREVIOUS HOMICIDE. TOGETHER THESE LABS EXAMINE A LITTLE OVER ONE HUNDRED MACHINE GUNS AND SIXTY TO SEVENTY SILENCERS A YEAR. TYPICALLY, THESE FIGURES BEGAN IN 1979, PEAKED, AND NOW ARE DIMINISHING. THE NUMBERS ARE DIMINISHING BECAUSE OF A CHANGE IN PROCEDURE BY THE CRIMINALS. IN THE PERIOD FROM 1979 TO 1982, SHOOT-OUTS WERE COMMONPLACE

IN THE LAST TWO AND ONE HALF YEARS, THE LOCAL OFFICE OF ATF HAS SEIZED THE FOLLOWING FIREARMS:

SEIZED (WEAPONS WHERE ARRESTS WERE MADE)

PISTOLS, RIFLES, SHOTGUNS	617
MACHINE GUNS, SAWED-OFF SHOTGUNS, SILENCERS	364

PURCHASED (USUALLY FROM UNLICENSED DEALERS OR DEALERS WHO MIGHT BE DEALING IN CONTRABAND GUNS)

PISTOLS, RIFLES, SHOTGUNS	110
MACHINE GUNS, SAWED-OFF SHOTGUNS, SILENCERS	139

RETAINED (WEAPONS THAT WERE TAKEN DURING SEARCHES AUTHORIZED BY WARRANTS WHERE OWNERSHIP WAS NOT DETERMINED)

PISTOLS, RIFLES, SHOTGUNS	113
MACHINE GUNS, SAWED-OFF SHOTGUNS, SILENCERS	43

ABANDONED (WEAPONS TURNED IN TO THE LOCAL OFFICE OF ATF)

PISTOLS, RIFLES, SHOTGUNS	10
MACHINE GUNS, SAWED-OFF SHOTGUNS, SILENCERS	10

OR A TOTAL OF 1,406 TAKEN INTO CUSTODY. OF THAT AMOUNT, ONLY 66 WERE STOLEN.

AND THE WEAPONS WOULD BE LEFT ON THE SCENE (WITH SERIAL NUMBERS DRILLED OUT). ENSUING PUBLICITY AND THE NUMBER OF INNOCENT PEOPLE KILLED OR WOUNDED MADE A HOSTILE ENVIRONMENT, SO THE CRIMINALS HAVE CHANGED THEIR METHODS.

THE LOCAL OFFICE OF THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE) HAVE CONFISCATED THIRTEEN MAC 10'S, INCLUDING TEN EQUIPPED WITH SILENCER'S, WHEN ONE SEARCH WARRANT WAS SERVED.

GUNS

PREDOMINATELY, THE MAC (MILITARY ARMAMENT CORPORATION) 10 AND 11, ORIGINALLY MANUFACTURED IN GEORGIA AND SOLD AS A PISTOL, FIRED 16 ROUNDS PER SECOND. INITIAL WEAPON HAD A SELECTIVE SWITCH, WHICH ALLOWED THE WEAPON TO BE FIRED SEMI OR FULLY AUTOMATIC. PRODUCTION OF THESE WEAPONS WAS HALTED WHEN ATF SECURED A COURT FINDING WHICH RULED THEY WERE MACHINE GUNS. THE MODELS HAVE CHANGED TO A SEMI-AUTOMATIC, BUT A SIMPLE FILING OR GRINDING OF A TRIP WOULD ENABLE A WEAPON TO FIRE FULLY AUTOMATIC. WHEN SOLD AS PISTOLS, FEDERAL REGISTRATION WAS NOT REQUIRED.

KG-9'S, MANUFACTURED IN DADE COUNTY, WERE QUICKLY CLASSIFIED AS MACHINE GUNS WHEN IT WAS DISCOVERED THEY WERE TOO EASY TO CONVERT TO A FULLY AUTOMATIC. THEY HAVE SINCE RE-DESIGNED AND NOW PRODUCE AND SELL THE KG-99, WHICH IS NOT ABLE TO BE CONVERTED.

SILENCER'S

MAC MANUFACTURED AND SOLD ON A MASS PRODUCE BASIS. AFTER BEING ORDERED TO DESTROY, MANY WERE FOUND WELDED TOGETHER. SOURCES FOR SILENCER'S ARE NOW MACHINE SHOPS, KITS WHICH ARE AVAILABLE AND ADVERTISED (SHOTGUN NEWS), AND AT GUN SHOWS PARTS WILL BE SOLD BY DIFFERENT VENDORS WHICH, WHEN ASSEMBLED, BECOME A SILENCER. IT IS LEGAL TO POSSESS A SILENCER AS LONG AS THEY ARE REGISTERED WITH ATF.

HANDGUNS

ON TUESDAY, MAY 22, THE BROWARD COUNTY COMMISSION PASSED ON FIRST READING, AN ORDINANCE ON GUN MANAGEMENT. THIS ORDINANCE DICTATES A TEN DAY WAITING PERIOD FOR PERSONS DESIRING TO PURCHASE HANDGUNS. IN THAT TEN DAY PERIOD, A LIMITED CRIMINAL BACKGROUND IS DONE. THE PHRASE, "LIMITED CRIMINAL BACKGROUND" WILL BE EXPLAINED LATER.

THE PASSAGE OF THIS ORDINANCE WAS POSSIBLE BECAUSE 61% OF THE VOTERS IN BROWARD COUNTY APPROVED A BALLOT REFERENDUM IN THE MARCH ELECTIONS. DURING DISCUSSION AND DEBATES ON THE MERITS OF THE ORDINANCE, THIS WRITER USED TO GREAT ADVANTAGE SOME OF THE FOLLOWING FACTS.

DADE AND BROWARD COUNTY LEAD THE UNITED STATES IN MULTI GUN SALES. IN A ONE YEAR PERIOD, 12,813 GUNS WERE PURCHASED IN SUCH SALES. "MULTI GUN SALE", AS DEFINED BY FEDERAL LAW, IS THE PURCHASE OF TWO OR MORE WEAPONS IN A FIVE DAY PERIOD. USING ONLY NEWSPAPER ARTICLE'S, WE WERE ABLE TO SHOW THAT THE INVESTIGATION ATF CONDUCTS ON SUCH SALES IS AFTER THE FACT. THE LOCAL SPECIAL AGENT IN CHARGE, DON CONROY, WAS QUOTED THAT "OVER 90% OF THE FORMS COMPLETED FOR SUCH SALES USED EITHER FICTITIOUS NAMES OR ADDRESSES."

SOME ARRESTS MADE AND PUBLISHED IN THE PAPERS WERE (1) A NEW YORK MAN, ROBERT SPARKS, WAS ARRESTED FOR USING FALSE IDENTIFICATION WHEN HE PURCHASED THIRTEEN GUNS IN BROWARD COUNTY AND RETURNED TO NEW YORK.

(2) IN FEBRUARY OF 1984 ANOTHER NEW YORKER, DOUGLAS

ORFALA, WAS ARRESTED FOR USING FALSE IDENTIFICATION WHEN HE PURCHASED TWENTY-THREE HANDGUNS. SOME OF THESE GUNS WERE USED IN STREET CRIMES IN NEW YORK CITY.

(3) A HANDGUN PURCHASED IN BROWARD COUNTY WAS USED IN A NEW YORK CITY SUICIDE THREE DAYS LATER.

(4) ANOTHER PURCHASE IN BROWARD WAS USED TWO WEEKS LATER IN AN EAST COAST ORGANIZED CRIME MURDER.

ROBERT J. CREIGHTON, SPECIAL AGENT IN CHARGE OF THE MANHATTAN OFFICE OF ATF STATED FOR NEWS MEDIA "FLORIDA IS THE NUMBER ONE SOURCE OF FIREARMS COMING IN TO NEW YORK CITY."

WITHIN THE STATE OF FLORIDA, RON CHANDLER, A CONVICTED MURDERER AND AN ESCAPEE FROM RAIFORD PRISON, PURCHASED SIX MAC 10'S IN BROWARD COUNTY UNDER AN ALIAS.

POLLS CONDUCTED BEFORE THE REFERENDUM VOTE SHOWED ANY WHERE FROM 81 to 85 PERCENT OF THE PEOPLE DESIRED SOME TYPE OF GUN LEGISLATION. AS STATED PREVIOUSLY, THE REFERENDUM PASSED WITH A 61% MAJORITY.

THE WORDS "LIMITED CRIMINAL INVESTIGATION" WERE USED PREVIOUSLY. BECAUSE OF AN NCIC ADVISORY BOARD POLICY THAT NAME INQUIRIES THROUGH NCIC SHOULD BE RESTRICTED FOR CRIMINAL JUSTICE PURPOSES, BROWARD COUNTY AND OUR GROUP WERE TOLD THAT A COMPUTER CHECK BY NAME FOR THIS CRIMINAL BACKGROUND INFORMATION WOULD BE ILLEGAL. AS CURRENTLY STRUCTURED, THE CRIMINAL BACKGROUND TO BE PERFORMED UNDER THE BROWARD COUNTY ORDINANCE WILL BE WRITTEN CORRESPONDENCE TO FCIC (FLORIDA CRIME INFORMATION CENTER) BY MAIL. A RETURN BY MAIL WILL

BE MADE IN SEVENTY-TWO HOURS TO INDICATE IF THE PERSON WAS CONVICTED IN THE STATE OF FLORIDA. CONVICTIONS IN OTHER STATES WILL NOT BE AVAILABLE FOR OUR BACKGROUND CHECK.

SINCE THE PASSAGE OF THE CRIMINAL BACKGROUND CHECK IN BROWARD COUNTY, PALM BEACH COUNTY IS NOW ABOUT TO ADOPT A FOURTEEN DAY WAITING PERIOD. THEY TOO WILL BE HAMPERED BY THE INABILITY TO CHECK ON NATION WIDE CONVICTIONS THROUGH NCIC.

I BELIEVE YOUR COMMITTEE SHOULD QUESTION THE NCIC BOARD ON HOW THEY EXCLUDE CRIMINAL BACKGROUND CHECKS FOR HANDGUNS FROM THE NCIC.

Mr. HUGHES. Thank you, Chief, for an excellent statement.

Let me ask you, and this is just a general question which has puzzled me. What legitimate value does a silencer or a machinegun have to anybody?

Chief TIGHE. I have to explain, I personally see no value. I have a gentleman in my city that is a collector. He has 29 automatic weapons. I asked him what good are silencers? He told me, well, if you are shooting at birds you can get one and not scare the second one away. I don't know of any good reason for a silencer.

Mr. HUGHES. Are you aware of any reason why a law enforcement agency would use a silencer?

Chief TIGHE. I heard that statement made and I think I resent it, to tell you the truth. I have never known any law enforcement agency to use a silencer.

Mr. HUGHES. I was puzzled by that, I had never heard of any law enforcement agency using a silencer for any purpose.

Chief TIGHE. I agree with you, sir.

Mr. HUGHES. I don't have any questions. I think your testimony is quite clear. I appreciate your traveling from Florida to be with us today. You have been most helpful to us. Unfortunately, as you know, my colleague, Clay Shaw from Florida, was here earlier, but he has a direct conflict right now. He has another committee meeting under way, as did my colleague, Mr. Smith, who for a while, had to go to another committee meeting. We appreciate your coming here today and providing some insight for us. Thank you. Mr. Smith.

Mr. SMITH. Yes, thank you, Mr. Chairman.

Chief, thank you for coming up. Also, I want to commend you for the work that you have done, not only during your career in law enforcement but also during the time that you have been president of the Tri-County Association.

I think that the chairman would like to hear from you answers to the questions as they relate to what problems you now have in

Broward County. Although they are not within the totally scope of this hearing, I think the subcommittee ought to be aware of it. Certainly, I am.

And the gun referendum is passed, and let me commend you also on your chairmanship of that. As you know, you and I have a lot of friends, together with you, who helped in that battle. What problems are you going to have in trying to get your weapons checks done within the 10-day period?

I think that it is important that this subcommittee understands that there is a problem at the Federal level and that we may need to be of some service to a lot of communities around this country who are going to have problems enforcing their waiting period ordinances because there will not be information available within the time of the waiting period.

Chief TIGHE. Yes, sir.

Mr. SMITH. Why don't you go ahead and tell that to the subcommittee?

Chief TIGHE. That would be the second time that I would appear before you, sir, to ask for assistance to us local agencies within Broward County.

Broward County, Tuesday, passed on the first reading, a 10-day waiting period for the people that desire to purchase a weapon. That 10-day waiting period would give us the opportunity to do a background investigation in criminal activity, if the person was ever convicted of a felony and should not own a weapon.

Unfortunately, during the campaign it was pointed out to us that we would not be able to use the computer, what is known as the NCIC computer, to get background information. Because of the NCIC policy, which is the Federal Bureau of Investigation advisory policy, we could not get from what we call the FCIC background information on anyone that was arrested within the State of Florida.

We have to take the applications, forward them to Tallahassee, they have to be looked up manually. If there are any convictions where the person could not receive a weapon, that would be so noted and returned to us by mail.

This particular ordinance, I believe, is going to become a standard for many more communities throughout the United States. It deals only with one specific person, and that is the criminal who should not have the weapon.

The county immediately north of us, Palm Beach County, is about to enact the same ordinance with a 14-day waiting period and with the same background information.

There are two things what bother me and two things that could assist us in making it even quicker. No. 1, that the FBI look at their policy as far as determining if we cannot get convictions from people or if they are wanted. They could be wanted at the present time and we could not find that out without going through the State of Florida.

The State of Florida could only give us the information for the State of Florida. If a man is convicted in the State of Florida, and is wanted in the State of Florida, we could learn that. If he is wanted for murder or anything in any other State, we could not learn that.

So one of the things I would like to point out, one of the reasons I believe that was 61 percent of the people voted for that, was the fact that within both Dade and Broward County almost 12,000 handguns were sold last year in what are called multigun sales. Most of them ended up in New York.

Consequently, the background check that we do should include the State of New York, and that is why we would ask for your assistance to approach the FBI to change their policy.

Mr. SMITH. Now, you have indicated to me, Chief, that that is a policy that is not by statute but rather by a regulatory agency making rules that they felt were appropriate.

Chief TIGHE. That is correct, sir. They say that the information they would give out is of a criminal nature. We believe this is a criminal nature. If a man has been convicted, if a man is wanted, most certainly that is a criminal process.

Mr. SMITH. And you have been denied access, or will be denied access to the NCIC?

Chief TIGHE. We have been denied.

Mr. SMITH. Thank you, I appreciate your taking the time to tell us that because I think it is very important.

I think you are correct. More and more communities around this country are beginning to stir in the direction of having, at the very least, waiting periods on transactions where guns are legally sold, so that during the waiting period background checks can be made on the applicants who want to purchase those weapons.

If they have to do everything by mail, you will have to have waiting periods of 30 or 60 days, given the bureaucracy at the State and Federal level before you get anything, which would be at that point an unacceptable wait which would probably kill the kind of pro referendum proposal that might otherwise pass with a 10- or 14-day waiting period.

So I would certainly second what you said to the chairman. I hope that we can, at some point in time, have some hearings or ancillary hearings when the FBI is here and raise the issue of access to the NCIC by various local police agencies who are doing background checks where the law mandates that in a local area.

Thanks again for being here.

Chief TIGHE. Thank you. I believe we have the tape if you desire.

Mr. SMITH. Yes. I just want, for the record, to tell everyone that the chief has done an excellent job, not only in Pembroke Pines, which is a fine city of about 36 or 37,000, maybe up to 40,000?

Chief TIGHE. Sorry, sir, you insulted us, we are 43,000.

Mr. SMITH. Oh, we are up to 43,000? Well, I was going by the 1980 statistics. I guess you shouldn't do that since Florida is growing by leaps and bounds.

You have done a terrific job in the city and also as the president of the Florida Tri-County Police Chiefs Association which is very well respected in our area.

Mr. HUGHES. Chief, I gather that the FBI will run a fingerprint check for you.

Chief TIGHE. Yes, sir.

Mr. HUGHES. But the turnaround time is right now, what, about a month?

Chief TIGHE. I would say, sir, longer than that. We had an occasion of needing the fingerprints of a police officer and it took us longer than 6 weeks.

Mr. HUGHES. That is why it is important to have access to criminal histories through NCIC.

Chief TIGHE. Through the computer, yes, immediate answers.

Mr. HUGHES. I see, to have rapid access to that information.

Chief TIGHE. Sure.

Mr. HUGHES. You know, I found something interesting in the statistics in connection with apparently your movement in south Florida, for which you are to be commended, to secure a waiting period. I gather that a number of things came out. No. 1, when the special agent in charge there, apparently, began to look at a profile of the people making application for handguns, he found that a very high percentage—I have a figure of almost 90 percent of the forms—for the sales contained either fictitious names or addresses.

Chief TIGHE. This is their Mr. Conroy, sir, and he is doing an excellent job in south Florida. This is in reference to the Federal law on a multigun sale. Multigun sale dictated by Federal law is two guns in a 5-day period.

Nobody is ever going to convince me that a person buying 30 handguns is a legitimate person. That is the type where he says 90 percent of those addresses are fictitious. In the 3 months that we were working to get this ordinance, there were four arrests made by New York people, not by Florida people, who presented false identification to purchase those type of weapons.

Mr. HUGHES. I have also felt it is ludicrous for the Federal Government to require an applicant for a handgun to fill out a form which has a series of questions, two of which are: Do you have a criminal record? And, second, do you have a mental illness?

I have often said, they have got to have a mental illness if they answer either one of those questions yes.

I think that there are compelling reasons why we should have some degree of uniformity. Your community can pass an ordinance but if the next community doesn't pass an ordinance, you are going to find that all of those who want to purchase handguns for illicit purposes are going to move over to the community without the ordinance.

That has happened right in this region. You can travel not very far from here in the Capitol and walk into a handgun shop in some of the neighboring States and walk out in 10 minutes by just showing a phony ID, and you can have as many handguns as you want.

Chief TIGHE. I believe, the proof was in one of the arguments that we received while we were working in New York City which has the Sullivan law. It does not work according to the man in charge of the Manhattan branch of the ATF because of the handguns that are coming from Florida.

Mr. HUGHES. Well, I am not sure what the circulation of handguns would be if they didn't have a law. We don't have any statistics on that.

But in any event, you have been very helpful to us, Chief. Unfortunately, I am not going to be able to view this because——

Mr. SMITH. We have a vote on.

Mr. **Hughes** [continuing]. We have a vote on, and I also have two groups in the Capitol here today that I have got to see right away, so I am not going to be able to view it myself. Perhaps the staff might be able to view it.

Chief **Tighe**. Then, I publicly thank Mr. Ralph Page who did that, and channel 7 for allowing me to bring the tape to the subcommittee hearing today.

Mr. **Hughes**. Yes, we are indebted to channel 7 for providing that. I understand it was well done. Perhaps the staff can brief me on what the segment shows.

Mr. **Smith**. If the chief would allow us to keep the tapes, the staff can see if, I can certainly bring it home at some point and return it. I am sure Ralph Page, who used to be a detective with the Miami Metro Dade Police——

Chief **Tighe**. We would be glad to do so, sir.

Mr. **Hughes**. Thank you, Chief.

Chief **Tighe**. Thank you, sir.

Mr. **Hughes**. We appreciate your assistance.

The subcommittee stands adjourned.

[Whereupon, at 1:10 p.m., the subcommittee adjourned.]

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ADDITIONAL MATERIAL

STATEMENT OF THE HONORABLE JOSEPH G. MINISH: New Jersey:11th District
TESTIMONY FOR THE CRIME SUBCOMMITTEE ON "COP KILLER BULLETS"
May 17, 1984

Mr. Chairman and Distinguished Subcommittee Members: I am pleased to join you today to testify before your Subcommittee. The issue of armor-piercing bullets is of the utmost importance for the public safety of American police officers, as well as for our society in general. It is especially appropriate that you have scheduled this hearing during "National Police Week", an honorary period when we remember the valiant men and women who daily risk their lives to protect our families, our safety, and our property.

I am aware that the Subcommittee has previously received testimony on the issue of armor-piercing bullets. Therefore, let me be brief with my explanation of the reasons why a ban is needed now on certain handgun bullets and then turn to the question of defining the type of bullets which need to be limited in their availibility.

Perhaps the great tragic irony of the current situation is that armor-piercing bullets were originally manufactured to aid law enforcement officials. These high speed projectiles were deemed to be particularly useful for hitting moving vehicles.

Police Department soon discovered however, that due to the awesome penetrating ability of this ammunition, they were not practical to use and even dangerous to police officers and innocent citizens. The bullets lack stopping power and they possess a greater ricochet ability than conventional ammunition so they were not suited to any use where crowds, or even a random pedestrian, were present. Moreover, the obvious dangerousness of the bullets to the officers themselves has resulted in

Police Departments rejecting their use by officers. I do not know of one single police department in the country known to officially approve of what have been dubbed: "Cop killer bullets."

Between 1974 and 1983, the number of law enforcement officers killed by handguns has declined by 43%. This is a marked decrease since bulletproof vests have been widely used and a trend which of course we would want to continue. Because the death of even one police officer is one too many. The vests, consisting of 18 layers of Kevlar, are rendered almost useless by armor-piercing bullets. Truly we can see why these bullets have been called: "Cop killers."

This unacceptable situation - where criminals can purchase ammunition to thwart law enforcement officials - must be remedied. The legislation introduced by my distinguished colleague from New York is the answer to this problem. As a sponsor of the legislation, I cannot emphasize strongly enough that cop-killer bullets have no legitimate commercial use. Moreover, this bill has no intention of having any adverse effect on the legitimate hunter or gun collector.

Now the question has been raised as how we will define the type of ammunition which must be banned. I submit that this question is not too difficult to answer, and I would be very disappointed if there were further delays in banning "cop killer bullets", because a so-called definitional question was the stumbling block.

The Department of Justice has funded a research project being carried out by the National Institute of Justice and the National Bureau of Standards to define the type of bullets which specifically should be outlawed. In the context of a Congressional hearing, this may not be the best place to name, manufacturer by manufacturer, each bullet banned.

However, the National Institute of Justice's report can be incorporated into later Committee preceedings and I for one would certainly not object if these changes were incorporated in the mark-up session.

Moreover, the Law Enforcement Standards Program in the Department of Justice has already issued a report, dated December 1978, which established minimum performance requirements and methods of testing for ballistic resistance of police body armor. Therefore, I do feel that the necessary information exists to classify the types of ammunition to be outlawed.

Finally, the straight-forward approach to the definition, as outlined in the original bill, I believe would still suffice on this question. Simply stated:any handgun bullet which can penetrate the soft body armor worn by police officers should be banned.

Virtually every major police organization supports this legislation, included in this list are the International Association of Chiefs of Police, the National Association fo Police Organizations, the International Union of Police Associations, and the Fraternal Order of Police. This is a clear law and order measure which will help to protect our law enforcement community. I am therefore disappointed with those who simply try and paint a controversial image on this legislation as "back-door gun control." These are weak and unfounded accusations attempted to divert public attention from crucial and necessary bills.

Thank you for allowing me to appear before you today. In conclusion, I cannot emphasize enough that this is a critical measure which should be enacted with all due haste. The lives of many police officers are dependent on it.

Testimony of the
HONORABLE SILVIO O. CONTE
House Committee on the Judiciary
Subcommittee on Crime
May 17, 1984

Mr. Chairman, and members of the Subcommittee, one of the most important protections developed for our law enforcement personnel in the last several decades is soft body armor. As we are all aware, however, the true effectiveness of this development is threatened by the illegitimate and criminal use of ammunition that has the capability of piercing this armor.

It is worth noting from the outset that armor-piercing ammunition is not a new phenomenon. Winchester, for example, had developed armor-piercing ammunition as early as the 1920's, well-preceding the development of soft body armor.

The Justice Department was aware of this when it began testing various types of body armor in the early 1970's. The vests that were developed from a synthetic fabric known as Kevlar are not bulletproof, as is commonly perceived; they are bullet-resistant. The objectives were to develop a type of armor that would be lightweight, could be comfortably worn at all times, and that would protect officers against the most common threats they encounter in the street, such as .38 and .22 caliber handguns.

The evidence supports the conclusion that Type IIA body armor (the standard set by the NILECJ, and the type most commonly worn by law enforcement officers) is doing its intended job; it is defeating the threats most commonly encountered by our law enforcement personnel. Since its development and use in the mid-70's, Kevlar body armor has reportedly saved the lives of over 400 police officers. In fact, no officer has yet been killed by armor-piercing ammunition while wearing soft body armor, with one exception. That officer was killed by ammunition fired from a 30-06 rifle at a distance of 50 yards, a threat level that Type IIA armor was not designed to protect against.

Therefore, to address the threat of armor-piercing ammunition, there are effectively two options: 1. if possible, improve the effectiveness of the armor; or 2. ban the ammunition that poses the threat. With respect to the first option, the Department of Justice is sensitive to the fact that law enforcement personnel may now be facing increased threat levels in the street. As times change, needs change, and the Department has been working diligently to develop a more effective soft body armor that can still be comfortably worn and will protect against many of these increased threat levels. It is my understanding that the Department hopes to announce later this year the development of this new armor, which I further understand will be classified as Type IIIA.

That gets us to the elusive problem of armor-piercing ammunition. My good friend and colleague from New York, Mr. Mario Biaggi, has suggested what appears to be a good solution — ban the import, manufacture, and sale of these armor-piercing ammunitions. We are all familiar, however, with the definitional problems that have plagued this bill since its introduction. Expert ballistics people in both the Justice and Treasury Departments have been working on this problem for the past three years, and have not yet been able to fashion an acceptable definition. At the hearing held two years ago on this subject by this Subcommittee, both Justice and Treasury opposed the Biaggi Bill. In testimony offered at that time, Deputy Assistant Treasury Secretary Robert Powis alluded to the definitional problem. He stated that attempts to define armor-piercing cartridges "invariably include a wide range of ammunition commonly used for hunting, target shooting, or other legitimate and long-established purposes." The Justice Department, represented by then Associate Attorney General Rudolph Giuliani, put it more succinctly: "The simple fact is that some bullets with a legitimate use will defeat soft body armor." At a hearing held on March 7 by the Senate Subcommittee on Criminal Law, each agency reiterated these positions, indicating that they would be unable to support the Biaggi Bill given the still elusive problem of finding an acceptable definition.

As a hunter of many years with some knowledge of firearms and their capabilities, I can testify to the difficulties confronting experts. Most notably, these include the fact that many rifle and handgun cartridges are now interchangeable, and the fact that armor-piercing capability is a function of not one but several factors, including caliber, velocity, firing distance, bullet composition and shape, and firearm used. There are experts who will undoubtedly be testifying before this Subcommittee more completely as to these difficulties.

There are some indications, however, that the Departments of Justice and Treasury are finally closing in on a solution to this problem. Conversations with each of those agencies this week revealed that a proposed definition of armor-piercing may be forthcoming soon. An objective definition that will not penalize our law-abiding citizens but will make unavailable armor-piercing ammunition that truly has no legitimate purpose is eagerly anticipated by all involved with this issue, and would permit adoption of the Biaggi approach. This development, coupled with the development of more effective body armor, may put an end to this menace.

In the meantime, while officials wrestle with this definitional problem in hopes of finding an acceptable, long-term solution, there is an immediate protective measure that can be adopted — mandatory sentencing. Every bill that seeks to address this problem, and all four that are being considered by this Subcommittee today, contain a mandatory sentencing provision. While there continues to be difficulty in drafting an objective definition, it is apparent that there is little or no disagreement on instituting a mandatory sentencing provision. To cite Deputy Assistant Secretary Powis' testimony submitted at the March 7 Senate hearing, "...a mandatory prison sentence..for an individual who uses and carries a handgun loaded with armor-piercing ammunition during or in relation to the commission of a federal crime of violence...is an important legislative remedy. We feel very strongly that an enhanced mandatory penalty is the way to discourage the utilization of armor-piercing ammunition by criminals." It is my understanding that the latest Uniform Crime Report issued by the FBI continues to support the conclusion that mandatory penalties are an effective deterrent to violent crime.

The legislation I introduced, H.R. 3796, provides an interim mechanism for defining "armor-piercing" that will allow the mandatory sentencing provision to be enacted without further delay. Under H.R. 3796, which is very similar to Section 1006 of S. 1762, the mandatory sentence would be imposed when it can be proven that ammunition carried or possessed by a person during the commission of a felony, WHEN FIRED FROM THE HANDGUN USED DURING COMMISSION OF THAT CRIME, can penetrate Type IIA armor. It would be a five-year mandatory sentence, in addition to any other sentence directed by the court, and it could not be suspended.

In addition, any individual so convicted would be ineligible for parole while serving that sentence.

With this mechanism available, it seems unconscionable to permit the debate that has delayed enactment of the Biaggi Bill to prevent us from swiftly enacting a mandatory sentencing provision. It may be possible at some future date to classify successfully as armor-piercing that ammunition which has no legitimate sporting use and which imperils our law enforcement sector. In the meantime, however, it is our responsibility to provide an immediate deterrent to that element of our society which chooses to use illegitimately and criminally ammunition capable of penetrating soft body armor. H.R. 3796 provides us with the mechanism we need to impose immediately that deterrent, and it is my sincere hope that the Subcommittee will take favorable action on my bill as soon as possible.

Testimony of the
National Association of Police Organizations (NAPO)
in Support of H.R. 953

The National Association of Police Organizations (NAPO) is an organization which represents some 45,000 working police officers nationwide, and is primarily concerned with national legislation which affects the well-being of public safety officers throughout the United States.

Of all the legislation concerning public safety officers it would seem that this bill, H.R. 953, introduced by Congressman Biaggi in the House, is one upon which all segments of the law enforcement community and the executive and legislative branches of government could agree. We frankly do not understand the opposition to this bill, nor the foot-dragging that has blocked the passage of this legislation for over two years.

As an organization which represents "line" police officers, we know only too well the statistics which point up the cases of death and serious injury to officers who might be unfortunate enough to be the targets of a criminal weapon without the light body armor which many of our police officers now wear. We also know the statistics which show the high incidence of lives saved and serious injuries avoided as the result of the use of protective vests. This alone should be enough "evidence" to support the ban on the manufacture, importation, and sale of ammunition which can penetrate the most common protective vests.

It is our understanding that a reasonably definitive set of standards has been developed after many months of testing. It is time that these standards be cleared by OMB and that the Congress get on with the job of enacting legislation. The overwhelming majority of the public supports this legislation; about that there can be no doubt. Editorial comment has been uniformly favorable as well.

The fear expressed in some limited quarters is that if the standards are not absolutely precise enough, some ammunition possibly may be banned which otherwise might not fall under the purview of the legislation. We respectfully submit that the Congress is experienced in weighing relative choices, and the choice in this instance is between more law enforcement officers killed and possible restriction of the use of some limited forms of ammunition. Shall the search for an absolutely perfect set of ammunition standards indefinitely delay enactment of this legislation?

This is not an anti-sportsman bill nor is it an anti-gun bill. We have precise enough knowledge of what kind of ammunition pierces light body armor and what kind does not. The time for debate has now passed. We ask for action on this bill now.

We thank the sponsors and supporters of this measure on behalf of the working police officers of this country.

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

STATEMENT SUBMITTED TO THE HOUSE CRIME SUBCOMMITTEE

May 17, 1984
by
Donald E. Fraher
Legislative Director
Handgun Control, Inc.

Handgun Control Inc., 810 18th Street, N.W., Washington, D.C. 20006 (202) 638-4723

Handgun Control, Inc., is a national citizens organization One Million Strong working for the passage of a federal law to keep handguns out of the wrong hands. Handgun Control, Inc., strongly supports the Law Enforcement Officers Protection Bill (H.R. 953) and applauds the tireless efforts of Congressman Mario Biaggi to enact this legislation.

It is most appropriate that this committee address the cop-killer bullet issue during National Police Week. Especially while we are honoring the men and women who risk their lives every day for the public safety, we should seek ways to prevent police deaths in the line of duty. That is precisely what Congressman Biaggi's bill would do, by outlawing cop-killer bullets.

The proliferation of cop-killer bullets is of great concern to our supporters, many of whom serve in the law enforcement community. Handguns account for over 75% of police deaths in the line of duty. For that reason, nearly half of the nation's police wear bulletproof vests for protection. It is our firm belief that the production of handgun bullets designed specifically to defeat those vests should be stopped immediately.

When the Law Enforcement Officers Protection Bill was first introduced, Handgun Control, Inc., testified in support of the measure and assumed it would pass the Congress virtually unopposed. Before long, however, we realized the bill faced a fierce challenge by the National Rifle Association. It was then that we joined the law enforcement campaign to urge the bill's passage. The basis for our involvement is perhaps best expressed in a letter from a woman in Alexandria, Virginia, who wrote:

> Dear Congressmen:
>
> As the mother of a local police officer I urge you to ban the cop-killer bullet. I'm tired of the NRA having control of everything connected with guns in this country. Aside from police officers one of you gentlemen or the President may well be the next target of one of these bullets!

Her sentiments are echoed by thousands of others -- police officers and their friends and families as well as concerned Americans with no other personal stake in this issue but the safety of our law enforcement community and public officials. Most compelling of all are the letters we've received from police themselves -- members of the rank and file who risk their lives every day in the line of duty. One such officer wrote:

> The public needs to be aware of this situation that we police officers are in. It's not bad enough that they

> (meaning the bad guys) have vehicles that will leave us in the dust, and better equipment than the smaller Dept. can offer the officer, but to give them something of this quality that is capable of penetrating a vest that a police officer has gone to all the trouble to put on and then put up with all the hassle of wearing it. It just doesn't seem fair.

Thousands of these rank and file law enforcement officers have signed our petitions endorsing H.R. 953. Not only individuals, but the largest law enforcement organizations in the country as well have demanded a ban on cop-killer bullets. At last count, 36 police groups had officially endorsed H.R. 953, including the Fraternal Order of Police and the International Brotherhood of Police Officers, as well as state and local police organizations from Las Vegas, Nevada to Reading, Pennsylvania. On April 16, the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriff's Association, and the Police Executive Research Forum reaffirmed their support for the Moynihan-Biaggi bill in a letter to this Subcommittee, saying:

> . . . there is no reason for armor-piercing bullets to be on the market. We can find no legitimate use, either in or out of law enforcement for such bullets. . . As long as the manufacture and sale of armor-piercing ammunition remains unregulated, the possibility that a law enforcement officer will be killed or seriously wounded remains unacceptably high.

In addition, over 150 newspapers from all across America have called for passage of the Moynihan-Biaggi bill. More newspapers endorse the bill each week.

The reasons for this public outcry are sound. It may be true that bulletproof vests were never intended to protect the wearer from every firearm attack. But they were designed to defend police from the most common and deadly attack -- by handguns. FBI crime statistics show that street criminals simply do not kill police with long guns, fists, bottles, bricks, knives, or any other conceivable weapon nearly as often as with handguns. The same is true for our elected officials -- the chief threat to our President and other prominent public figures is the concealable handgun. The purpose of bulletproof vests is to protect against handgun fire, and since 1975 they've been doing a good job. According to the Department of Justice, approximately 400 police lives have been saved by the vests, and in the first years the vests were used (1974 - 1981), police deaths declined 31%.

That's why cop-killer bullets are such a terrible threat. When fired from an ordinary handgun, these bullets negate any benefit of wearing a bulletproof vest.

Perhaps defense of these bullets would be feasible if they had any legitimate use. Opponents of the cop-killer bullet ban are hard-pressed to find any such purpose. Law enforcement has refused to use them, despite any contention by their manufacturers that they are designed for police. Aside from the fact that police rarely require a handgun bullet capable of penetrating walls, cement blocks and steel, the bullets are simply too dangerous to use. If they hit their target, they are quite likely to keep on going and injure innocent bystanders or even people beyond walls. They also ricochet far more than ordinary bullets and, again, increase the risk of hitting the wrong target.

Responding to the widespread opposition to continued sale of cop-killer bullets, at least 15 state legislatures and the City Council of the District of Columbia have outlawed them. Kansas, Oklahoma, Alabama, Rhode Island, Illinois, Hawaii and California paved the way in 1982. In 1983, Florida, Indiana and Texas joined them. These states represent every geographical area of the United States, and the margins by which their legislatures enacted cop-killer bullet bans were universally overwhelming.

The problem is that state laws end at state lines. Even those states that have acted on this threat are subject to proliferation of the bullets from their neighbors. We need a uniform national law to stop the cop-killer bullet. Even President Reagan acknowledged that fact when he addressed the National Rifle Association's national convention last year.

Despite its broad-based support, the Law Enforcement Officers Protection Bill has still to be enacted three years after its original introduction. The Reagan administration must accept partial responsibility for this failure. The Department of Justice promised to provide Congress with a test for identifying cop-killer bullets by the end of last summer, but continually delayed. The department finally offered a test to the Senate Subcommittee on Criminal Law on March 7, and maintained that the Administration supported the "thrust" of the Moynihan-Biaggi bill. We have urged the President to recognize the sacrifices of the law enforcement community by fully endorsing this police protection bill during National Police Week. Yet President Reagan has failed to give H.R. 953 the strong and vocal support necessary to overcome the negative campaign by the National Rifle Association which blocks the bill's passage. The NRA and the peddlers of cop-killer bullets, whose sole concern is profit, have sought to deceive the Congress about the true impact of this legislation.

The most misleading argument against H.R. 953 claims that cop-killer bullets cannot be defined and any legislation to ban them would inevitably outlaw a host of commonly used sporting ammunition. Yet the very proponents of that argument simultaneously assert that the manufacturers of cop-killer bullets have been instructed by the Treasury Department to sell them to police only, and therefore they pose no threat. There is something wrong with this logic. First, if the bullets can't be defined adequately, how did the Treasury Department manage to make an agreement with their manufacturers to restrict their sale? Second, if opponents of H.R. 953 believe that such an agreement was a positive step, why do they balk at making that agreement the law, with effective enforcement and mandatory sentencing for violators to back it up? As William Summers of the International Association of Chiefs of Police put it:

> Claims that this ammunition is designed for police use only are merely a ludicrous ploy to gain market acceptability, since no enforcement of the regulation is possible.

This point is illustrated by the experience of Arthur Kassell, Chairman of the California Narcotics Authority. During an interview in 1982 on the NBC Magazine television program, he explained how he had purchased KTW bullets, labeled "For Police Use Only."

> One of the stores that was mentioned, we contacted them and just said we'd like to get some KTW bullets. . . And they said fine. And I gave them my address and they sent them to me C.O.D.

Mr. Kassell was never asked if he was a police officer or if the bullets were for police use. It isn't difficult to imagine this scenario repeated hundreds, perhaps even thousands, of times throughout the country, whether the bullets are intended for police use only or not. In fact, Richard Janelli of the Nassau County Police Department testified on March 7 that he recently purchased armor-piercing bullets in New York. No one asked him if the bullets were for police use, much less required proof that he was purchasing them on behalf of his department. As long as no law governs their sale, cop-killer bullets will be available to criminals and assassins.

A second argument, repeated often by the NRA, is that cop-killer bullets simply are not used to kill police and therefore no threat has been demonstrated. This reasoning fails to acknowledge that information on police shootings is not always complete with details of the type of ammunition used. The FBI did not even note until 1980 whether or not a slain officer wore a bulletproof vest. Furthermore, police only began wearing bulletproof vests in the mid-seventies, and so it was not until after that time that criminals had any reason to even contemplate means of defeating soft body armor.

There are in fact at least two documented cases of cop-killer bullets being used against police. The bullets caused the death of one victim and the disability of another. How many police need to die before the NRA is convinced that the threat is real? Twenty? One hundred? Waiting for tragedy to provide evidence of the danger is irresponsible when legislation to help prevent such tragedy awaits passage.

In the face of Congressional inaction and NRA pressure, an alternative to banning cop-killer bullets, H.R. 3796, has been offered in the House by Congressman Silvio Conte. This alternative is mandatory sentencing for using cop-killer bullets in the commission of a crime, and was incorporated into the Criminal Code Bill (S. 1762) recently passed by the Senate. Proponents of the measure say it overcomes any confusion over defining the bullets. The sentence only would be imposed on criminals who carry bullets that could penetrate a bulletproof vest if fired from the handgun used in the particular crime in question.

Many well-meaning legislators agree that the Conte bill may be the answer: it evades the question of definition while focusing on criminals. Yet successful execution of this idea would have to be next to impossible. Its implication would be that every time a criminal were caught with a handgun, the law would require local police to test the bullets contained in the weapon to determine whether or not they were in fact armor-piercing when fired from that particular gun. Given the number of armed criminals arrested every day, one has to wonder where police would find the facilities, time and interest to perform ballistics tests routinely in an effort to enforce this law.

Aside from any testing problems associated with mandatory sentencing alone as a means of stopping cop-killer bullets, the fact remains the mandatory sentencing proposals do not address the central issue: saving police lives. H.R. 953 would impose mandatory sentences for using cop-killer bullets in crime while taking the crucial step of stopping their manufacture and sale. It is of the slightest consolation to the spouses, families, friends and colleagues of a slain police officer to know that his killer is behind bars -- *if*, that is, the killer is one of the few that is caught, convicted, and sentenced. Those who have recognized the cop-killer bullet threat and therefore endorsed the mandatory sentencing proposal have simply stopped short of a real answer. If the Moynihan-Biaggi bill saves even one life, it will have done a far better job than mandatory sentencing alone ever can.

There is only one objective for which we should all be working: protecting our police. The nation's largest police organizations, newspapers from across America, thousands of rank and file police who have signed our petitions, and 15 State legislatures are asking the Congress to stop cop-killer bullets. 18 Senators and 183 Congressmen have responded by cosponsoring the Moynihan-Biaggi bill. Handgun Control, Inc., urges this Committee to take action as well and favorably report the bill. Remember that until these bullets are outlawed, no police officer, nor even our President himself, can feel protected by his bulletproof vest. In the words of an officer in Iowa City, Iowa:

> The odds for the officer out on the street aren't always good to begin with, and as for myself, knowing these bullets are available to the average man on the street won't make me feel any better when I put on my vest every night before work.

Surely our police deserve whatever protection the law can afford. Each and every day these men and women risk their lives for our safety and security. The very least we can do in return is to pass the Law Enforcement Officers Protection Bill. Thank you.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

November 27, 1984

TO : Honorable Mario Biaggi
Attn: Craig Floyd

FROM : American Law Division

SUBJECT : Summaries of Reported Judicial Decisions Making Reference to Armor-Piercing Ammunition.

This will respond to your request and our subsequent telephone conversation regarding the above matter. Specifically, you ask for a brief description of the significance of armor-piercing ammunition in the written opinions of the cases you have cited. In addition to summaries of those decisions provided by your office, we have included a few additional ones found in our research. In all of these cases only the merest reference to armor-piercing ammunition is made by the court.

State Cases

1. People v. Goodman, 396 N.E. 2d 274 (Ill. App. Ct.), 77 Ill. App. 3d 569 (1979). The defendant appealed her conviction on charges of involuntary manslaughter. The appellate court here held that the evidence failed to prove beyond a reasonable doubt that she had not acted in self-defense. Her conviction was reversed. The victim was her husband, a police sergeant, who was shot with his own weapon. The only reference in the case to armor-piercing ammunition is in a dissenting opinion which states that "decedent was hit 3 times with armor-piercing bullets (not the type normally carried in the service weapon used by him on police duty)." (at 279).

2. People v. French, 75 Ill. App. 2d 453 (1966). This was an appeal from an armed robbery conviction. In discussing a prior armored car robbery that the defendant may have been involved in, the court made reference to the fact that defendant had been given six armor-piercing bullets before that incident. The conviction was affirmed.

3. Louisiana v. Ca [illegible] ching. No. KA-0548, slip. op., La. Ct. App. [illegible] Cir. (August [illegible] 1983). The defendant was found guilty of being a convicted felon is possession of a firearm in violation of a Louisiana statute. On appeal his conviction was affirmed. He was apprehended on suspicion of attempted murder whereupon his firearm was seized. It was found to contain teflon-coated ammunition. Testimony by an expert witness had been received to the effect that "this ammunition could penetrate a bullet-proof vest, and that it was the most dangerous ammunition on the market today."

4. People v. White, 220 N.W. 2d 789 (Mich. Ct. App.) 54 Mich. App. 342 (1974). The defendant was convicted of assault with intent to murder. He appealed on the grounds that a search following his arrest made without a warrant was not a reasonable one. The Court of Appeals here held that the search was reasonable in that the apprehending officers had been fired upon before defendant surrendered. Speedy trial arguments were also rejected. Armor-piercing bullets were seized at the time of arrest.

5. State v. Hansen, 312 N.W. 2d 96 (Minn. 1981). The defendant appealed convictions relating to charges of aggravated criminal damage to property. He had been accused of firing armor-piercing ammunition through the vehicle of private security guards at a powerline construction site. After finding that certain statements admitted into evidence were not properly admissible and that the defendant's Sixth Amendment right of confrontation was violated, the Supreme Court of Minnesota reversed the conviction.

6. Williams v. State, 369 So. 2d 910 (Ala. Crim. App. 1979). The defendant was convicted of robbery and assault with intent to murder. On his arrest police officers found an assortment of weapons loaded with armor-piercing ammunition. The Alabama Court of Criminal Appeals affirmed the conviction.

7. *Tafero* v. *State*, 403 So. 2d 355 (Fla. 1981). After conviction of robbery, kidnaping, and murder, the defendant was sentenced to death. Two police officers were shot in the incident leading to apprehension, the court stating that armor-piercing ammunition was employed by the defendant. The Florida Supreme Court affirmed the convictions and sentence.

8. *State* v. *Francoeur*, 387 So. 2d 1063 (Fla. 1980). The State of Florida appealed the lower court granting of a motion to suppress controlled substances taken from a vehicle. At the time of defendant's apprehension he was in possession of a .45 calibre automatic pistol loaded with armor-piercing bullets. The appellate court here held the exigent circumstances permitted the search and therefore reversed and remanded.

9. *Pressley* v. *State*, 261 So. 2d 522 (Fla. Dist. Ct. App. 1972). The defendant appealed a first degree murder conviction. The District Court of Appeals affirmed, finding no reversible error in failure to sever the trial of two defendants. The indictment was for murder in the course of armed robbery of a grocery store. The decedent "was shot five times with a .38 calibre Taurus Brazil pistol and died as a result of the wounds inflicted by the four armor-piercing conical bullets coursing through his chest . . ."

Federal Cases

10. *United States* v. *Melvin*, 596 F.2d 492 (1st Cir.), *cert. denied*, 444 U.S. 837 (1979). The defendant was convicted of possession of unregistered firearms in violation of 26 U.S.C. 5861 (d) and he appealed. He challenged the validity of the warrant authorizing the search of his home which led to seizure of the weapons. A cache of ammunition, including armor-piercing bullets, was described in a dissenting opinion as having been taken by the police. The conviction was affirmed.

11. *United States* v. *Cahalane*, 560 F. 2d 601 (3d Cir. 1977), *cert. denied*, 434 U.S. 1045 (1978). The defendants in this case appealed their conviction for conspiracy and aiding and abetting the illegal exportation of arms and ammunition to Northern Ireland without a license. Some of the ammunition involved was of the armor-piercing variety. The Court of Appeals affirmed the conspiracy counts of the indictment. See also, lower court decision, 422 F. Supp. 147 (E.D. Pa. 1976).

12. United States v. Hillick, No. 75-1036, slip op., 4th Cir. (Aug. 25, 1975). Appellants appealed their sentences on convictions of multiple violations of the Federal Gun Control Act of 1968 (Pub. L. 90-618, 82 Stat 1213, as amended). They had been found guilty of conspiring to transport weapons, explosives, and armor-piercing ammunition to the Irish Republican Army. The sentences were upheld.

13. United States v. Burton, 341 F. Supp. 302 (W.D. Mo. 1972). See also, United States v. Burton, 351 F. Supp. 1372 (W. D. Mo. 1972), aff'd, 475 F.2d 469 (8th Cir. 1973). The defendant was charged with delivering a firearm and ammunition to a common carrier for transportation and shipment in interstate commerce without giving proper notice. Some of the rounds in a fully loaded revolver were armor-piercing. A challenge of the search leading to the prosecution was rejected.

It would appear from a reading of these decisions that armor-piercing ammunition was in no instance a primary focus of judicial inquiry. The cases may nevertheless be of significance to the extent that they shed light on the frequency with which incidents involving such bullets have come before the courts. It is, of course, impossible to know how many cases have involved such ammunition but have not resulted in specific reference to armor-piercing capability in a written opinion.

We hope this information will be of some assistance. If we can be of further help, please let us know.

Kent M. Ronhovde

Kent M. Ronhovde
Legislative Attorney

NINETY-EIGHTH CONGRESS

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ALAN F. COFFEY, JR.

May 16, 1984

Mr. Stephen Higgins
Director
Bureau of Alcohol, Tobacco
  & Firearms
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20226

Dear Director Higgins:

The Subcommittee on Crime is interested in examining the manufacture, registration and criminal aspects of the commerce in and use of machine guns and silencers. Would you please prepare a detailed explanation of each of the areas on the attached list.

The Subcommittee on Crime will be holding a public hearing on these issues and the question of whether a total ban on the transfer or possession of machine guns and silencers is appropriate on Thursday, May 24, 1984.

With best personal wishes,

Sincerely,

William J. Hughes
Chairman
Subcommittee on Crime

WJH:esh

Attachment

1. THE CURRENT REQUIREMENTS FOR TAX STAMPS TO MANUFACTURE, DISTRIBUTE, TRANSFER OR RECEIVE MACHINE GUNS AND SILENCERS.
2. THE INCREASING NUMBERS OF NATIONAL FIREARMS ACT (NFA) WEAPONS DEALERS, AND THE INCREASING PRACTICE OF OBTAINING LARGE NUMBERS OF NFA WEAPONS AS A DEALER AND CEASING TO DO BUSINESS AS A DEALER RESULTING IN THE TRANSFER OF THE WEAPONS TO ONE'S PERSONAL COLLECTION WITHOUT PAYMENT OF THE $200 TAX FOR EACH WEAPON.
3. THE NUMBER OF NFA WEAPONS IN EXISTENCE, THE NUMBER REGISTERED WITH BATF, THE NUMBER TRANSFERRED EACH YEAR FOR THE PAST FIVE YEARS (BROKEN DOWN BY STATE IF POSSIBLE).
4. THE NUMBER OF MANUFACTURERS OF NFA WEAPONS AND THE NUMBER OF NFA WEAPONS THAT ENTERED INTO COMMERCE EACH YEAR FOR THE PAST FIVE YEARS.
5. THE LEGALITY OF IMPORTING NFA WEAPONS.
6. THE PRACTICE OF DEALERS IMPORTING "SAMPLE" MACHINE GUNS, ALLEGEDLY FOR SALE TO POLICE DEPARTMENTS, WHICH ARE ACTUALLY TRANSFERRED TO OTHER DEALERS.
7. THE SUBSTANCE OF SPECIAL EXAMINATION, IF ANY, OF APPLICANTS TO TRANSFER OR RECEIVE NFA WEAPONS.
8. THE ACTION BY THE SOUTH FLORIDA LAW ENFORCEMENT COMMUNITY TO DECLINE TO CERTIFY ANY APPLICATIONS FOR NFA WEAPONS TRANSFERS, AND RELATED LITIGATION.
9. THE AVAILABILITY OF AMMUNITION FOR NFA WEAPONS, AND RESTRICTIONS, IF ANY, ON ITS DISTRIBUTION.
10. STATISTICS ON THE SEIZURE OF NFA WEAPONS.

11. THE STATUS OF MILITARY SURPLUS NFA WEAPONS AND THE WAR TROPHIES EXCEPTION TO THE LIMITATIONS ON MILITARY WEAPONS.
12. CLASSES OF NFA WEAPONS THAT ARE CONTRABAND.
13. MODIFICATIONS OF MILITARY WEAPONS FOR POLICE USE.
14. THE EXTENT OF SALE OF SEMI-AUTOMATIC WEAPONS AND THE EASE OF THEIR CONVERSION TO MACHINE GUNS.
15. SALE OF NFA WEAPONS BY POLICE DEPARTMENTS.
16. THE NUMBER OF CRIMINAL CASES INVOLVING ALL TYPES OF MACHINE GUNS, AND THE NUMBER OF CRIMINAL CASES INVOLVING REGISTERED MACHINE GUNS.
17. THE NUMBER OF THEFTS OF NFA WEAPONS.
18. THE REQUIREMENT, IF ANY, FOR SECURITY OF NFA WEAPONS IN THE OWNER'S POSSESSION.
19. THE REQUIREMENT, IF ANY, TO NOTIFY BATF IN THE EVENT OF A THEFT OF A NFA WEAPON.
20. THE COMMERCE IN NFA WEAPONS, LEGITIMATE AND ILLEGITIMATE.
21. THE LEGITIMATE USE OF SILENCERS, THE NUMBER OF REGISTERED SILENCERS, AND THE NUMBER OF REGISTERED OWNERS OF SILENCERS.
22. THE NUMBER OF CRIMES COMMITTED WITH SILENCERS, AND THE NUMBER OF CRIMES COMMITTED WITH REGISTERED SILENCERS.
23. THE LIMITATIONS, IF ANY, ON THE ADVERTISING OF MACHINE GUNS AND SILENCERS.
24. THE LIMITATIONS, IF ANY, ON CIRCUMSTANCES OF THE USE OF MACHINE GUNS AND SILENCERS.

OFFICE OF THE DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

May 22, 1984

Honorable William J. Hughes
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear ~~Mr. Chairman:~~ Bill

Enclosed are responses to the questions raised in your letter of May 16, 1984, concerning the manufacture, registration and other law enforcement aspects of the commerce in machineguns and silencers.

We hope this has been responsive to your request. If you need further information, please let us know.

Sincerely yours,

Stephen E. Higgins
Director

Enclosures

#1 Q. The current requirements for tax stamps to manufacture, distribute, transfer or receive machineguns and silencers.

A. 26 USC Section 5801 imposes a special (occupational) tax on those engaging in the business of importing, manufacturing or dealing in National Firearms Act (NFA) firearms which include machineguns and silencers. The tax is paid on a fiscal year basis and the rates for those involved with machineguns and silencers are:

Class 1 - Importer of Firearms	$500.00
Class 2 - Manufacturer of Firearms	$500.00
Class 3 - Dealer in Firearms	$200.00

There are three other classes of special tax, however those relate only to those NFA firearms classified as "any other weapons."

An appropriate Federal firearms license is required for all persons who intend to engage in any of the businesses noted above.

The special tax is paid to the Internal Revenue Service Center for the area in which the taxpayer's business is located. ATF requires the taxpayer to obtain an identification number before commencing business. This requirement is to ensure the special tax was paid and to allow the taxpayer to begin business as soon as possible. To obtain the identification number, the taxpayer must furnish the NFA Branch of ATF a copy of the taxpayer's Federal firearms license and any one of the following: a copy of the special tax stamp, a copy of the completed IRS Form 11 (Special Tax Return), or ATF Form 5320.3 (Certification of Tax Payment). Upon meeting these conditions, the taxpayer is qualified to operate. The issuance of a special tax stamp is non-discretionary. If someone pays the tax, the person has fulfilled the requirement.

The transfer tax rate on a machinegun or silencer is $200.00.

Q. The increasing numbers of National Firearms Act (NFA) weapons dealers, and the increasing practice of obtaining large numbers of NFA weapons as a dealer and ceasing to do business as a deler resulting in the transfer of the weapons to one's person collection without payment of the $200.00 tax for each weapon.

A. The number of NFA special taxpayers has increased over the past years. In FY 1978, our records showed that 808 Federal firearms licensees were registered with us as special taxpayers. The number increased to 2306 in FY 1983. At the end of April 1984, over 2600 licensees were registered with us. Approximately 90% of these are Class 3 Dealers,

Any transactions between special taxpayers is exempt from the transfer tax. Since the special tax rate for a Class 3 Dealer and the transfer tax on one machinegun or silencer are identical, this encourages a person to become qualified as a special taxpayer. There is a practice in the industry of qualifying as a special taxpayer, obtaining NFA firearms from other special taxpayers, and then ceasing the business that required the special taxpayment.

In these instances, as long as the structure of the licensee remains intact, i.e. sole proprietor, corporation, etc., the firearms acquired and registered as the business remain, after cessation, registered to the entity. If it is a sole proprietor, the registration is to the individual; for a corporation; the firearms remain registered to the corporation. Only if the corporation disolves would transfer applications be required.

3 Q. The number of NFA weapons in existence, the number registered with BATF, the number transferred each year for the past five years (Broken down by state if possible).

A. The total number of NFA firearms registered in the National Firearms Registration and Transfer Record at this time is 194,940.

Over the past five fiscal years we have approved the following number of transfers of firearms:

FY 79	14041
FY 80	14669
FY 81	15197
FY 82	18074
FY 83	23274

We do not maintain these statistics by state. We can not provide a number of NFA firearms in existance because those firearms in control of the United States Government do not require registration and we have no way of knowing the number of NFA firearms possessed illegally.

4 Q. The number of manufacturers of NFA weapons and the number of NFA weapons that entered into commerce each year for the past five years.

A. Our records show 173 Federal firearms licensees are currently qualified as Class 2 Manufacturers. Over the past five fiscal years, the number of NFA firearms legally entered into commerce by manufacture and import (our figures are not broken down any further) are:

FY 79	58092
FY 80	79239
FY 81	55848
FY 82	45348
FY 83	39886

These figures do not include the production figures of 24 licensed manufacturers who are exempted from the provisions of the NFA by virtue of their United States Government contracts.

*5 Q. The legality of importing NFA weapons.

A. NFA firearms may be imported into the United States for the following reasons only:

(1) The use of the United States or any department, independent establishment, or agency thereof or any political subdivision thereof; or

(2) Scientific or research purposes; or

(3) Testing or use as a model by a registered manufacturer or soley for use as a sample by a registered importer or registered dealer.

The importer must submit an ATF Form 6 application, stating the reason for the importation and, if for use as a sample by a dealer, the name of the dealer. After approval and release from Customs, the importer must file ATF Form 2 to effect the registration.

These NFA firearms retain the import restrictions and may not be introduced into ordinary commercial channels.

6 Q. The practice of dealers importing "sample" machineguns allegedly for sale to police departments, which are actually transferred to other dealers.

A. As noted in the prior question, NFA firearms, including machineguns, may be imported for use as samples by registered dealers. These "sales samples" are to be used for possible sales to government agencies, the only entities that could recieve imported NFA firearms (other than samples).

ATF allows dealers to transfer their registered imported samples to other special taxpayers, subject to the import restrictions on the firearm's use as a sales sample, basing the transfer on a legitimate business reason for the disposition. In many cases, the imported firearm is valueless to any government agency because the firearm is outmoded and outdated, but the law and implementing regulations set no standards as to what could be imported. There is value however in the firearm as a collectors item for the same reasons that it is valueless to an agency.

7 Q. The substance of special examination, if any, of applicants to transfer or receive NFA weapons.

A. Any Federal firearms licensee applicant has computer checks made for a criminal record through the Treasury Enforcement Communications System and the National Crime Information System.

For any person who is not a special taxpayer, a more exhaustive check is conducted. When the transferee is an individual, his fingerprints must be submitted with the application to transfer the firearm. In most cases, the transferee's fingerprints are classified by the Federal Bureau of Investigation and a check is made for a criminal record. A record check is made for each transferee through the Treasury Enforcement Communications System, the National Crime Information Center, and the Secret Service. Records checks are also made through the Interstate Identification Index which accesses the FBI criminal records and provides the same information. The resolution of the disposition of a criminal record or the magnitude of the penalties imposed may require a field investigation to determine if the transferee is prohibited from possessing a firearm.

8 Q. The action by the South Florida Law Enforcement community to decline to certify any applications for NFA weapons transfers, and related litigation.

A. For the transfer of an NFA firearm to any person other than a special taxpayer, or the making of an NFA firearm by any person other than a qualified manufacturer, a certificate is required on the application from a law enforcement official in the transferee's area of residence. In the certificate, the official states that he has no information that the transferee is going to use the particular firearm unlawfully nor is his receipt or possession a violation of State or local law. The making of the certificate on the part of the official is a discretionary action although a certificate is required for the processing of the application. If no official will make the certificate, ATF will not process the application.

Over the past several years applications to transfer NFA firearms in the south Florida area have come to a virtual halt because of the local officials' hesitancy to make the law enforcement certification. Mr. Eugene Steele, trading as Machinegun Kelly's, in North Miami, filed suit in U.S. District Court in the Southern District of Florida to declare the requirement for a certificate invalid or if not invalid, to force the local officials to make the certificate. Mr. Steele's argument that the requirement was invalid was not accepted by the court and he has appealed the decision. The other portion of his suit is pending.

#9. Q. The availability of ammunition for NFA weapons, and restrictions, if any, on its distribution.

A. The vast majority of NFA weapons fire conventional small arms ammunition. There are no special restrictions on this type ammunition. It is regulated in the same manner as sporting ammunition.

Certain types of NFA weapons, namely destructive devices, fire ammunition which is specifically regulated by the Gun Control Act. To manufacture, import or deal in ammunition for destructive devices requires a license fee of $1000.00 per year. However, this ammunition may be distributed to any individual qualified to purchase ammunition under the GCA. Certain of this ammunition is classified as a destructive device in and of itself. Specifically any ammunition containing more than 1/4 ounce of high explosive or incendiary charge or any rocket having more than 4 ounces of propellent charge is a destructive device and requires the same registration as other NFA weapons.

#10 Q. Statistics on the Seizure of NFA weapons

A. Although this questions only deals with seized NFA weapons, there are generally three ways NFA weapons come into ATF custody. These are defined as seized property, purchased property and abandoned property.

The FY 1983 Investigative summary of the three categories is set forth below:

Seized Property	
Sawed-off Rifle/Shotguns	184
Machineguns	120
Silencers	657
Pen Guns	59
Other NFA	27
Machinegun Conversion	90
	1137
Purchased Property	
Sawed-off Rifles/Shotguns	161
Machineguns	583
Silencers	256
Pen Guns	7
Other NFA	280
Machinegun Conversion	73
	1360
Abandoned Property	
Sawed-off Rifles/Shotguns	213
Machineguns	4
Silencers	3
Pen Guns	0
Other NFA	2
Machinegun Conversion	1
	223
Total	2720

Note: These statistics do not include any NFA weapons seized by State or local law enforcement agencies.

11. Q. The status of military surplus NFA weapons and the war trophies exception to the limitations on military weapons.

A. Military surplus NFA weapons are generally prohibited from importation into the United States except for (1), use by the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; (2), scientific or research purposes; (3), testing or use as a model by a registered importer or registered dealer.

With respect to war trophies, the Gun Control Act provides that the Secretary may authorize members of the Armed Forces to import firearms determined by the Department of Defense to be war souvenirs. However, this provision does not permit the importation of weapons within the purview of the National Firearms Act. Accordingly, Department of Defense regulations list machineguns and other National Firearms Act weapons, regardless of the degree of serviceability, among the items which are precluded from being retained and introduced into the United States by Armed Forces personnel. The Customs Service is authorized to release a firearm without an import permit from ATF where a properly executed DD Form 603, Registration of War Trophy Firearms, is presented providing that the firearm to be brought in has been classified as a war souvenir under Department of Defense regulations.

#12 Q. Classes of NFA weapons that are contraband

A. Under the Federal firearms laws, any machinegun, short-barrel rifle or shotgun, silencer, or other NFA weapons must be registered with ATF for an individual to legally possess such a weapon. Additionally, ATF approval must be obtained prior to making or transferring an NFA weapon.

Those NFA Weapons not legally registered with ATF are contraband weapons. There are no known statistics which would provide information on how many contraband weapons may be in existence in the United States.

#13 Q. Modifications of military weapons for police use.

A. We do not have any statistics available that would provide information on how many conventional military weapons have been acquired by police departments and then converted to machineguns. We suspect that it does occur occasionally but it rarely causes a law enforcement problem. Since police departments can receive NFA weapons for official use without paying the $200 transfer tax, there is little incentive for them to convert conventional weapons to fire fully automatic.

A more frequent occurence would be the importation of surplus military firearms for official use of a Department and then immediately sell them to police officers or other individuals for personal use.

Such weapons are generally prohibited from importation except for use by governmental entities.

#14. Q. The extent of sale of semiautomatic weapons and the ease of their conversion to machineguns.

A. Semiautomatic weapons of all types are very popular and are widely sold. Statistics on the volume of sale of semiautomatic weapons as opposed to other types are not available.

The unlawful conversion of semiautomatic weapons to machineguns is a growing problem. Virtually any semiautomatic weapon can be modified to permit full automatic fire. Most semiautomatic weapons are designed and manufactured in such a manner that conversion is fairly complex and requires considerable knowledge and skill. However, certain semiautomatic rifles and pistols have been produced which can be modified to permit full automatic fire in a matter of seconds or minutes. These modifications are simple, require little skill and entail only minor modification to or elimination of a part. Where possible ATF has classified weapons of this type as machineguns based on their design.

To further compound the problems of unlawful conversions of semiautomatic firearms to machineguns are kits which are marketed to convert all types of semiautomatic weapons to machineguns. If the kits are complete enough to affect the conversion, the kit is subject to the NFA and requires registration as a machinegun.

The problem occurs with kits which are sold only in a partially completed state with a portion of the kit supplied by one source and the remaining needed parts sold by another source. When the complete kit is acquired, the weapon can be easily converted.

This problem of conversion of semiautomatic firearms to machineguns is difficult to combat because ATF does not have the authority to require manufacturers to submit new weapon designs for approval prior to commercial marketing.

In addition to the conversion of semiautomatic weapons, we are currently faced with the problem of improperly destroyed machineguns and machinegun parts which are sold with partially finished machinegun receivers as "do it yourself kits".

15 Q. Sale of NFA weapons by Police Departments.

A. Government agencies, including police departments, are for the most part allowed to sell their registered firearms in ordinary commercial channels subsequent to ATF approval.

An exception to this is any firearm registered on ATF Form 10 for official use. These firearms may not be introduced into commercial channels and may only be transferred to other government agencies.

The agencies are required to apply for the transfer of any NFA firearm and receive approval before effecting the transfer. For an imported NFA firearm, we would allow the agency to transfer the firearm to a special taxpayer with the restriction that the subsequent transfer of the firearm must be to a government agency. This policy was implemented because the special taxpayers should be better suited to find an agency purchaser than would the selling agency.

#16 Q. The number of criminal cases involving all types of machineguns, and the number of criminal cases involving registered machineguns.

A. A total of 707 machineguns were acquired by ATF during FY-83. Most of the Federal firearms violations involved in these acquisitions are for illegal making or possession of unregistered firearms.

Registered machineguns which are involved in crimes are so minimal so as not to be considered a law enforcement problem. Additionally, should a machinegun be used to commit a murder or robbery, the State violations would probably be treated as the primary violation and State prosecution would be instituted. Any Federal violations would not likely be prosecuted if a substantial sentence is given on the State charge.

#17 Q. The number of thefts of NFA weapons.

A. While actual statistics are not available, the number of thefts of registered NFA weapons are minimal and is not considered a law enforcement problem. The actual number of thefts reported to the NFA Branch since October 1, 1983, totals 36. Occasionally, a collectors' NFA firearms are stolen and this is cause for concern. However, there are no Federal laws that require the registered owner of an NFA weapon to provide safe-guards against such thefts. The theft of unregistered weapons would not likely be reported.

Q. The requirement, if any, for security of NFA weapons in the owner's possession.

A. The law and regulations do not identify requirements for the security of an NFA firearm. However, since the law pertains to possession and "transfer" is broadly defined, any NFA firearm should be maintained so that only the registrant has access to it. This precludes the possibility of any transfer of possession without approval.

9 Q. The requirement, if any, to notify BATF in the event of a theft of a NFA weapon.

A. The regulations which implement the Act require the person losing possession of the registered firearm to make a complete report of theft to the Director immediately upon discovery of the theft.

#20 Q. The commerce in NFA weapons, legitimate and illegitimate

A. To legally transfer an NFA weapon, prior approval must be obtained from ATF. As evidenced by the large number of unregistered NFA weapons purchased during FY-83, illegal NFA weapons are a continuing problem and concern to ATF.

Another source of concern that is causing numerous law enforcement problems are unlawfully made full automatic weapons, silencers and conversion kits. This area was more fully addressed in Question Number 14. However, it should noted that many undesirable groups, such as the various motorcycle and street gangs, are known to be acquiring and stockpiling these type of weapons. In some cases, we have found licensed firearms dealers becoming a willing source for these gangs.

1 Q. The legitimate use of silencers, the number of registered silencers, and the number of registered owners of silencers.

A. Silencers, as with other NFA firearms, may be lawfully possessed under the provisions of the National Firearms Act.

There are 12,801 silencers registered in the NFRTR at this time. It would be difficult to quantify the number on the registered owners of silencers.

#22 Q. The number of crimes committed with silencers, and the number committed with registered silencers.

A. A total of 916 silencers were taken into custody by ATF during FY-83. Most of these were illegally made or possessed because proper authorization to make the devices was not obtained, as required by the Federal firearms laws.

Statistics are not available that reflect how many crimes were committed while using a silencer. However, the use of a registered silencer to commit a criminal act does not fall within the jurisdiction of the Federal firearms laws, unless the violation can be prosecuted in Federal court. In fact, the Federal violation involved when an unregistered silencer is used to commit a crime would generally be the fact that it is not registered as required by law, not because it was used to commit a crime.

The commission of a crime with a registered silencer is so minimal that it is not considered to be a law enforcement problem.

#23. Q. The limitations, if any, on the advertising of machineguns and silencers.

A. The Federal firearms laws enforced by ATF do not regulate the advertising of machineguns and silencers.

Q. The limitations, if any, on circumstances of the use of machineguns and silencers.

A. Limitations on the use of machineguns or silencers such as storage, security, sporting purposes, etc., are regualted by State and local authorities.

ARMOR PIERCING AMMUNITION AND THE CRIMINAL MISUSE AND AVAILABILITY OF MACHINEGUNS AND SILENCERS

WEDNESDAY, JUNE 27, 1984

House of Representatives,
Subcommittee on Crime,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2141, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes and Sawyer.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, assistant counsel; Theresa A. Bourgeois, staff assistant; Charlene Vanlier, associate counsel; and Phyllis N. Henderson, clerical staff.

Mr. Hughes. The Subcommittee on Crime will come to order.

This morning the Subcommittee on Crime is holding its third hearing this year on the problem of armor-piercing ammunition. The testimony that we have already received has strongly established that our Nation's police officers daily face the threat that they may be shot by criminals with ammunition that will penetrate the soft body armor which they are wearing to protect themselves in the event of an armed confrontation.

At our first two hearings, as they did over 2 years ago, the representatives of the administration told us that it could not support a ban on the manufacture or importation of armor-piercing ammunition as it was then being defined.

The administration indicated that it was working urgently to develop an approach that it believed was workable and enforceable. We encouraged the administration in that endeavor. We committed ourselves to moving legislation this year which would address the problem if at all possible.

Two weeks ago the administration was able to arrive at a position on how to define the term armor-piercing ammunition. This definition was incorporated into a draft bill and transmitted to the Congress on June 13 of this year. Three different versions of the bill have since been introduced.

The subcommittee believes that the issue of armor-piercing ammunition is an important one, and we would like to quickly move legislation that effectively addresses the problems. We are very pleased that the administration now supports the principle of curtailing the manufacture and importation of certain types of ammunition which pose this threat.

This subcommittee held four hearings on prior approaches to addressing the problem of armor-piercing ammunition, and we have learned a great deal in the process. I believe that my colleagues would readily agree that we have a great deal more to learn about ammunition, and particularly about the new approach that the administration has submitted to the Congress.

We have scheduled many, many knowledgeable witnesses today, and we have a very long schedule. I would like to urge all of the witnesses to make their points as succinctly as possible so that the subcommittee has a full opportunity to explore with all our witnesses the areas of uncertainty in the legislation before us.

I might say to the witnesses that I have read their statements so you can work on the assumption that the subcommittee is conversant with the statements. We are ready to call our first witness.

Our first witness this morning is Congressman Jack Brooks of the Ninth District of Texas. Congressman Brooks was elected to the 83d Congress in 1952 and to all succeeding Congresses. He is the distinguished chairman of the Committee on Government Operations and is the ranking member of the Judiciary Committee.

He also serves with distinction with the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and the Subcommittee on Monopolies and Commercial Law.

Congressman Brooks is the sponsor of H.R. 5845 which was introduced on June 14 of this year, and is one of the bills we will receive testimony on today.

He has had a most distinguished career over the years, and one of the pleasures to work with on the House Judiciary Committee. Jack, we are just delighted to have you with us this morning. Your prepared statement, which will be made a part of the record, is very comprehensive and we compliment you on your statement. Welcome.

TESTIMONY OF HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BROOKS. Thank you very much, Mr. Chairman. It is a pleasure to be here on behalf of H.R. 5845, the Law Enforcement Officers Protection Act of 1984, which I recently introduced.

Perhaps my best qualification to testify on the need to protect law enforcement officers from armor-piercing ammunition comes from my experience when I served in the Marine Corps in World War II and shot expert on the range at Parris Island. An armor-piercing bullet properly placed could very easily severely injure three or four people standing up in one row.

The bill that I have introduced will amend title 18 of the United States Code to prohibit the manufacture and importation of armor-piercing ammo except for law enforcement, military or export purposes.

Further, the manufacture or importation of these permissible uses is regulated through the application of licensing and annual fee provisions.

The bill also provides for a mandatory 5-year minimum prison sentence for the possession or use of armor-piercing ammo during the commission of a violent felony.

Soft body armor is credited with saving the lives of many law enforcement officers, and the provisions of my bill will help ensure the continued utility of these lifesaving vests by deterring the availability and the use of ammunition which is designed to penetrate them.

Mr. Chairman, H.R. 5845 is a product of extensive efforts by the various law enforcement agencies and interested private groups to draft legislation that is succinct, effective, and enforceable, while addressing both the concerns of law enforcement personnel and sportsmen.

My bill has the support of these interested parties, including the Treasury and Justice Departments, the International Association of Chiefs of Police, the Fraternal Order of Police, the National Association of Police Organizations, the National Rifle Association, and others, many of which will testify today.

My bill also has widespread bipartisan support from our colleagues in the House and currently the bill has over 150 cosponsors. We will get you 69 more, so you have guaranteed passage.

I urge the expeditious passage of this legislation in support of our Nation's police.

[The statement of Mr. Brooks follows:]

Statement by Chairman Jack Brooks
On H.R. 5845
Crime Subcommittee
Wednesday, June 27, 1984

I AM PLEASED TO APPEAR TODAY TO TESTIFY ON BEHALF OF H.R. 5845--"THE LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1984"--WHICH I RECENTLY INTRODUCED. THIS BILL WILL AMEND TITLE 18 OF THE UNITED STATES CODE TO PROHIBIT THE MANUFACTURE AND IMPORTATION OF ARMOR-PIERCING AMMUNITION EXCEPT FOR LAW ENFORCEMENT, MILITARY, OR EXPORT PURPOSES. FURTHER, THE MANUFACTURE OR IMPORTATION FOR THESE PERMISSIBLE USES IS REGULATED THROUGH THE APPLICATION OF LICENSING AND ANNUAL FEE PROVISIONS.

THE BILL ALSO PROVIDES FOR A MANDATORY FIVE-YEAR MINIMUM PRISON SENTENCE FOR THE POSSESSION OR USE OF ARMOR-PIERCING AMMUNITION DURING THE COMMISSION OF A VIOLENT FELONY.

SOFT BODY ARMOR IS CREDITED WITH SAVING THE LIVES OF MANY LAW ENFORCEMENT OFFICERS. TOGETHER, THE PROVISIONS OF MY BILL WILL HELP TO ENSURE THE CONTINUED UTILITY OF THESE LIFE-SAVING VESTS BY DETERRING THE AVAILABILITY AND USE OF AMMUNITION WHICH CAN PENETRATE THEM.

MR. CHAIRMAN, H.R. 5845 IS THE PRODUCT OF EXTENSIVE EFFORTS BY THE VARIOUS LAW ENFORCEMENT AGENCIES AND INTERESTED PRIVATE GROUPS TO DRAFT LEGISLATION WHICH IS SUCCINCT, EFFECTIVE, AND ENFORCEABLE, WHILE ADDRESSING BOTH THE CONCERNS OF LAW ENFORCEMENT PERSONNEL AND SPORTSMEN. MY BILL HAS THE SUPPORT OF THESE INTERESTED PARTIES, INCLUDING THE TREASURY AND JUSTICE DEPARTMENTS, THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, THE FRATERNAL ORDER OF POLICE, THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, THE NATIONAL RIFLE ASSOCIATION, AND OTHERS, MANY OF WHICH WILL TESTIFY TODAY. MY BILL ALSO HAS WIDESPREAD BIPARTISAN SUPPORT FROM OUR COLLEAGUES IN THE HOUSE. CURRENTLY, THE BILL HAS OVER 150 COSPONSORS.

I URGE THE EXPEDITIOUS PASSAGE OF THIS LEGISLATION IN SUPPORT OF OUR NATION'S POLICE.

# # #

I

98TH CONGRESS
2D SESSION

H. R. 5835

To amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1984

Mr. BIAGGI introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 921(a)(17) of title 18 of the United States Code is designated as section 921(a)(17)(A) and a new subparagraph (B) is added to section 921(a)(17)(A) and a new subparagraph (B) is added to section 921(a)(17) to read as follows:

"(B) The term 'armor piercing ammunition' means solid projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium copper, depleted uranium. The term shall not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, or any projectile which the Secretary finds is primarily intended to be used for sporting purposes. The term 'solid' in the first sentence of this paragraph means made entirely from one or more of the substances specified therein, but may include the presence of trace elements of other substances.".

SEC. 2. Section 922(a) of title 18 of the United States Code is amended by adding after paragraph (6) the following:

"(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

"(A) the manufacture or importation of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof, or

"(B) the manufacture of armor piercing ammunition for the sole purpose of exportation.".

SEC. 3. Subparagraph (A) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;".

SEC. 4. Subparagraph (C) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.".

SEC. 5. Subparagraphs (A) and (B) of section 923(a)(2) of title 18 of the United States Code are amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.".

SEC. 6. Section 924(c) of title 18 of the United States Code is amended (a) by striking the period at the end of paragraph (2) and adding in lieu thereof a comma and the word "or" and (b) adding new paragraphs (3) and (4) to read as follows:

"(3) during and in relation to the commission of a violent felony uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other term of imprisonment, including that imposed for the felony in which the armor piercing ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."

For the purpose of this subsection, the term violent felony means—

"(a) a felony (which may be prosecuted in a court of the United States) that has as an element, the use, attempted use or threatened use of physical force against the person or property of another, or

"(b) any other felony (which may be prosecuted in a court of the United States) that, by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of its commission.".

Sec. 7. These amendments shall take effect on the date of enactment of this Act, except that sections 3, 4, and 5 shall take effect on the first day of the first calendar month which begins more than ninety days after the date of enactment of this Act.

98TH CONGRESS
2D SESSION

H. R. 5844

To amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1984

Mr. FISH (for himself, and Mr. MICHEL) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 921(a)(17) of title 18 of the United States Code is redesignated as section 921(a)(17)(A), and a new subparagraph (B) is added to section 921(a)(17) to read as follows:

"(B) The term 'armor piercing ammunition' means solid projectiles and projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. The term shall not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting or any projectile designed for target shooting or any projectile which the Secretary finds is primarily intended to be used for sporting purposes. The term 'solid' in the first sentence of this subparagraph means made entirely from one or more of the substances specified therein, but may include the presence of trace elements of other substances.".

SEC. 2. Section 922(a) of title 18 of the United States Code is amended by adding after paragraph (6) the following:

> "(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to (A) the manufacture or importation of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof, or (B) the manufacture of armor piercing ammunition for the sole purpose of exportation.".

SEC. 3. Subparagraph (A) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

> "(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;".

SEC. 4. Subparagraph (C) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.".

SEC. 5. Subparagraphs (A) and (B) of section 923(a)(2) of title 18 of the United States Code is amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.".

SEC. 6. Section 924(c) of title 18 of the United States Code is amended (a) by striking the period at the end of paragraph (2) and adding in lieu thereof a comma and the word "or" and (b) by adding a new paragraph (3) to read as follows:

"(3) during and in relation to the commission of a violent felony uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other term of imprisonment, including that imposed for the felony in which the armor piercing ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein. For the purpose of this paragraph, the term violent felony means (A) a felony (which may be prosecuted in a court of the United States) that has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or (B) any other felony (which may be prosecuted in a court of the United States) that, by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of its commission.".

SEC. 7. The amendments shall take effect on the date of enactment of this Act, except that sections 3, 4, and 5 shall take effect on the first day of the first calendar month which begins more than ninety days after the date of the enactment of this Act.

I

98TH CONGRESS
2D SESSION

H.R. 5845

To amend chapter 44 of title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1984

Mr. BROOKS (for himself, Mr. DINGELL, Mr. WRIGHT, Mr. MICHEL, Mr. COELHO, Mr. FOLEY, Mr. LOTT, Mr. VANDER JAGT, Mr. FORD of Michigan, Mr. CONTE, Mr. SHARP, Mr. CRAIG, Mr. MURTHA, Mr. RITTER, Mr. SAM B. HALL, JR., Mr. WEBER, Mr. DANIEL, Mr. MCGRATH, Mr. RICHARDSON, Mr. STUMP, Mr. MONTGOMERY, Mr. PASHAYAN, Mr. CARR, Mr. HUNTER, Mr. TRAXLER, Mr. KEMP, Mr. MOLLOHAN, Mr. KASICH, Mr. ROSE, Mr. BILIRAKIS, Mr. BREAUX, Mr. SHAW, Mr. KILDEE, Mr. MARTIN of New York, Mr. COLEMAN of Texas, Mr. RUDD, Mr. PATMAN, Mr. BURTON of Indiana, Mr. TAUZIN, Mr. RIDGE, Mr. VOLKMER, Mr. HARTNETT, Mr. LUKEN, Mr. SCHAEFER, Mr. SLATTERY, Mr. HANSEN of Idaho, Mr. OBEY, Mrs. JOHNSON, Mrs. LLOYD, Mr. WALKER, Mr. DYSON, Mr. COURTER, Mr. FAZIO, Mr. MCCAIN, Mr. MURPHY, Mr. EMERSON, Mr. FIELDS, Mrs. VUCANOVICH, Mr. RITTER, Mr. SPENCE, Ms. FIEDLER, Mr. PETRI, Mr. VALENTINE, Mr. NIELSON of Utah, Mr. CORCORAN, Mr. SAWYER, Mr. STANGELAND, Mr. ALBOSTA, Mr. ROTH, Mr. MACK, Mr. MORRISON of Washington, Mr. BEDELL, Mr. FISH, Mr. MURPHY, Mr. FORD of Tennessee, Mr. MARLENEE, Mr. SWIFT, Ms. KAPTUR, Mr. BRYANT, Mr. RAHALL, and Mr. HERTEL of Michigan) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend chapter 44 of title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Law Enforcement Officers Protection Act of 1984".

SEC. 2. Section 921(a)(17) of title 18 of the United States Code is amended—

(1) by inserting "(A)" after "(17)"; and

(2) by adding at the end the following:

"(B) The term 'armor piercing ammunition' means solid projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium copper, depleted uranium. Such term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, or any projectile which the Secretary finds is primarily intended to be used for sporting purposes. The term 'solid' in the first sentence of this subparagraph means made entirely from one or more of the substances specified therein, but may include the presence of trace elements of other substances.".

SEC. 3. Section 922(a) of title 18 of the United States Code is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

"(A) the manufacture or importation of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof, or

"(B) the manufacture of armor piercing ammunition for the sole purpose of exportation.".

SEC. 4. (a) Subparagraph (A) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;".

(b) Subparagraph (C) of section 923(a)(1) of title 18 of the United States Code is amended to read as follows:

"(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.".

SEC. 5. Section 923(a)(2) of title 18 of the United States Code is amended by striking out subparagraphs (A) through (B) and inserting in lieu thereof the following:

"(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.".

SEC. 6. Section 924 of title 18 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e)(1) Whoever, during and in relation to the commission of a violent felony, uses or carriers a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other term of imprisonment, including that imposed for the felony in which the armor piercing ammunition was used or carried.

No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed under this subsection.

"(2) For the purpose of this subsection, the term 'violent felony' means—

"(A) a felony (which may be prosecuted in a court of the United States) that has an element, the use, attempted use or threatened use of physical force against the person or property of another, or

"(B) any other felony (which may be prosecuted in a court of the United States) that, by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of its commission.".

SEC. 7. The amendments made by this Act shall take effect on the date of enactment of this Act, except that the amendments made by sections 3, 4, and 5 of this Act shall take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment of this Act.

Mr. Brooks. I would ask, Mr. Chairman, at the conclusion of my testimony if I might, by unanimous consent, insert in the record a statement of the Honorable John Dingell.

Mr. Hughes. That will be, without objection, so received.

[The statement of Mr. Dingell follows:]

STATEMENT OF THE HONORABLE JOHN D. DINGELL
IN SUPPORT OF H. R. 5845
BEFORE THE
SUBCOMMITTEE ON CRIME
HOUSE COMMITTEE ON THE JUDICIARY
JUNE 27, 1984

Mr. Chairman, I appreciate the opportunity to present my views in strong support of H. R. 5845, the Law Enforcement Officers Protection Act of 1984, which was introduced by my good friend and colleague from Texas, Congressman Jack Brooks.

Mr. Chairman, H. R. 5845 is supported by the Democratic and Republican leadership of the House, and over 80 original cosponsors. The legislation is the result of a carefully crafted compromise by the Administration, the National Rifle Association, and the major police organizations involved in the drive to deal with the problem of so-called "cop killer" bullets. The bill would regulate the manufacture and distribution of certain types of ammunition which are specifically designed and marketed as armor-piercing. In addition, H. R. 5845 would impose a strict mandatory sentence for anyone who would use such ammunition during the commission of a violent felony.

Previous attempts to deal with the problem of indiscriminate killing of police officers by banning ammunition have been unsuccessful. Legislation introduced prior to H. R. 5845,

H. R. 953, was imperfectly drawn, overly broad, and opposed by myself and many of my colleagues, and vigorously opposed by the National Rifle Association and millions of American sportsmen. This opposition arose because H. R. 953 reached not only armor-piercing ammunition but numerous types of conventional ammunition used by law-abiding citizens for sporting purposes. Moreover, H. R. 953 would prohibit mere possession of this type of ammunition.

The Departments of Treasury and Justice have worked diligently to craft legislation to outlaw armor-piercing bullets while not affecting the millions of rounds of ammunition used by law-abiding gun owners. As an avid sportsman myself, and as a Director of the National Rifle Association, I have made clear to the Administration that I would not support *any* legislation which did not meet these tests. I am pleased to say that H. R. 5845 meets these tests and represents a delicate balance of the concerns and interests on this issue. *In its present form*, H. R. 5845 is supported by the Administration, all major national law enforcement organizations, and sportsmens' groups including the National Rifle Association. The legislation protects the interests of police, and precludes the prosecution of firearms owners for possession of armor-piercing ammunition, which would be virtually impossible to enforce due to the look alike nature of ammunition.

Mr. Chairman, I reiterate that H. R. 5845, as written, is widely supported by all the major interests who have been involved with efforts to restrict the manufacture and importation of certain types of armor-piercing bullets. It is supported by the House leadership on both sides of the aisle with a growing list of cosponsors. Any attempt to substantially alter the provisions of H. R. 5845, such as the addition of a provision requiring a "waiting period" for the purchase of handguns in the legislation, could very well disrupt the broad coalition now supporting the bill and endanger its chances for passage in the House. I therefore urge the Subcommittee to take expeditious action on H. R. 5845, without major modification, to ensure my continued support, the support of my colleagues, and eventual passage by the House.

Mr. Brooks. Thank you very much.

Mr. Hughes. Thank you very much, Jack, for your statement and for the support that you have offered to this legislative endeavor. It is my hope that we can develop some initiatives in this Congress. I realize that time is running short and it is very difficult, as you know, to try to move legislation that we already have in process. I think you know full well how difficult it is at this time, when we have so few legislative days remaining, but we are going to endeavor.

I sincerely believe that it is important for us to try to do something to ban the distribution of armor-piercing ammunition. And it is my hope that out of these hearings today will come some consensus on this.

Mr. Brooks. I feel that if we can pass this bill in the House and the Senate in this session we will get the President to sign it. It will not solve all of the problems in the whole world but it will be a definite step forward in perserving and enhancing the utility of these lifesaving vests and the protection they offer American police officials. I think they are entitled to it. It is not a total solution and it won't solve everyone's concerns—the various groups that don't want you to give your little kids BB guns—but it will be a step forward, I think, toward saving peace officers lives.

Mr. Hughes. We are going to hear from some experts today on the technical aspects of the legislation and, hopefully——

Mr. Brooks. Definition is, of course, important, we understand that.

Mr. Hughes [continuing]. With your cooperation, I am hopeful that we can do something. I share your concern that we do something substantive to attempt to protect the lives of law enforcement officers in particular, without unnecessarily treading on the legitimate sportsman in this country. That is the issue: trying to walk a fine line and balance any bill so that we don't penalize unduly the law-abiding citizen, but reach those that would engage in criminal activity.

Mr. Brooks. Our best example of what can happen, even without armor-piercing bullets, is my colleague next to me, Mr. Biaggi.

Mr. Hughes. Thank you. I have no further questions. The gentleman from Michigan?

Mr. Sawyer. No questions.

Mr. Hughes. I know you have another hearing so we thank you for your testimony.

Mr. Brooks. Thank you.

I think it would be good if they would get some water—generally the Judiciary Committee does not provide water because it keeps its testimony short and succinct. [Laughter.]

Since I have already quit, you might get water for the rest of them.

Mr. Hughes. We will note that for the record, Mr. Chairman, because I have wondered for some time what the secret was in trying to shorten these hearings.

Mr. Sawyer. Did you hear what Jim Wright said on the floor the other night about drinking water, that poem that he read, or did you miss that?

Mr. Brooks. Did he say it was better than whiskey?

Mr. **Sawyer**. No, he said it was considerably worse. He had a little poem that recited all the things that you ingest when you drink water and, believe me, it didn't sound very good.

Mr. **Brooks**. If you adulterate it with scotch or bourbon, you would answer that problem.

Mr. **Sawyer**. In the Judiciary Committee, we don't care much for adultery.

Mr. **Hughes**. I am sure when historians look at this record a few years from now, they are going to be puzzled as to how we worked water into the hearing. Peace.

Our next witness this morning is Congressman Mario Biaggi of New York City. Congressman Biaggi was elected to Congress in 1968. Prior to that time, he served with the greatest distinction in the police department of the city of New York. He was the most decorated officer in the history of the department and was wounded some 10 times in the line of duty.

Congressman Biaggi is chairman of the Merchant Marine Subcommittee and has worked closely with the Judiciary Committee on legislation to meet the needs of law enforcement officers in the fight against crime. He has testified before the subcommittee many times on this and numerous issues.

It is my pleasure to work with Mario Biaggi on the Merchant Marine and Fisheries Committee on which I serve. We have worked together on a lot of issues, both on that committee and in the area of crime. I don't think that there is any issue that bears on law enforcement that Mario Biaggi hasn't been involved in and taken a leadership role on.

It has been Mario Biaggi that has led the fight over the years to deal with armor-piercing bullets. We have had a lot of other voices join in of late but it has been Mario that has led this battle. It is Mario that has focused national attention upon the problem. It has been Mario Biaggi that has brought us to where we are today. We wouldn't be talking about a consensus legislation today if it weren't for Mario Biaggi.

I just want you to know, Mario, that I know I speak for a lot of our colleagues when I say thank you for your tremendous leadership role in this area. We have your statement which will be made a part of the record. You may proceed as you see fit.

TESTIMONY OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **Biaggi**. Thank you very much for your kind remarks, Mr. Chairman, and thank you for your efforts in this undertaking.

It has been nearly 5 years since I have initiated the legislative effort to outlaw armor-piercing bullets that can penetrate the bulletproof vest worn by more than half of our Nation's 570,000 law enforcement officers.

This is my third appearance before your distinguished subcommittee on this issue. I have the highest level of confidence that we are fast approaching successful completion of that task. This confidence is based on the fact that we have achieved what appears to be a workable solution that can be supported by all. But, most importantly, the legislative product we are considering today would help save police lives. As a 23-year police veteran, that has been my single objective from the outset.

This new legislation, H.R. 5835, which I have introduced with more than 130 of my colleagues, was developed jointly by the U.S. Treasury and Justice Departments; it has the support of the law enforcement community; and it is my understanding that even the National Rifle Association has assured the administration they would not oppose this new language.

I am basically satisfied that this consensus legislation is a viable and effective alternative to my original bill, H.R. 953, which I introduced over 2 years ago. More precisely, both bills have the same two basic components: they would outlaw the manufacture and importation of armor-piercing handgun ammunition, with certain exceptions; and they would establish tough mandatory prison terms for persons who commit crimes with this ammunition.

However, let me offer a word of caution, Mr. Chairman. Unlike some who have urged the administration proposal on this issue be rapidly pushed through the Congress, presumably without careful scrutiny or changes, I would suggest a more deliberative approach. More succinctly, Mr. Chairman, haste makes waste, especially in the legislative process. Having spent much of the last 5 years working to enact a ban on cop killer bullets, there is nobody who wants a prompt solution anymore than I do. Yet, I find the administration's sudden sense of urgency to rush this proposal through the Congress rather strange, especially when we were forced to sit to wait more than 2 years for the administration to come forward with a proposal to ban these bullets. Based on the bandwagon of support this administration initiative has enjoyed over the past 2 weeks, it is obvious that a ban on cop killer bullets has widespread appeal. Personally, I cannot help wondering where some of that support was during my 5-year struggle to achieve such a ban. Nevertheless, I welcome the administration's long-awaited contribution to this worthy cause and I believe their proposal brings us much closer to a final solution.

I introduced their proposal as demonstration of that belief but I refuse to call for the immediate passage of this measure until it has received the careful scrutiny of this body, and until any technical improvements that might be necessary are made.

A ban on cop killer bullets has great political appeal but it is of no use to the law enforcement community unless it works. That test must be applied before we can pat ourselves on the back. I am thankful that today's hearings marks the beginning of that process.

Under this new bill, armor-piercing ammunition would be defined by its design—namely, the harder metals these awesome projectiles are made from—rather than by a standard of penetration as used in H.R. 953. This is a significant difference since it had been argued that some bullets used for sporting purposes could have exceeded the standard set in H.R. 953.

The administration officials who drafted this new legislation and who will be responsible for its enforcement, have stated that this proposed definition would cover all armor-piercing ammunition which is currently known to exist. It also is intended to cover any new armor-piercing bullets that might be developed.

Especially significant are specific exemptions in the bill for "shotgun shot" used by hunters, "frangible projectiles designed for target shooting," and "any projectile which the Treasury Secretary finds is primarily intended to be used for sporting purposes."

These exemptions are designed to ensure that ammunition used primarily for sporting purposes is not affected in any way by this legislation. This had also been the intent of H.R. 953, but it was not specifically stated in the bill.

Several other differences between H.R. 5835 and H.R. 953 should be noted. First, this new legislation bans the future manufacture and importation of armor-piercing ammunition, but not the sale, as proposed under H.R. 953.

Second, unlike H.R. 953, the new bill would allow armor-piercing ammunition to be manufactured for export, in addition to providing unrestricted access to armor-piercing ammunition for Federal, State and local governmental units, which would include the law enforcement and military communities.

Third, unlike the old bill, H.R. 5835 would establish a new $1,000 license fee for those persons who wish to manufacture or import armor-piercing ammunition for the special purposes listed in the bill.

Finally, the new bill establishes a minimum mandatory 5-year prison sentence for persons who use armor-piercing ammunition in a crime. H.R. 953 had proposed a 1- to 10-year mandatory penalty for such crimes.

Mr. Chairman, I would be remiss if I did not qualify my support for this new legislation. First, I would prefer to include a ban on the sale of cop-killer bullets, as well as manufacture and importation. However, administration officials have argued convincingly that the gun dealer does not have the ability or resources to determine whether a bullet is armor-piercing or not. Instead, they must depend on their supplier, either the manufacturer or importer, for that determination.

While that is sound logic, I would urge Treasury and Justice officials to encourage gund dealers to voluntarily do whatever is possible to keep those bullets out of the hands of criminals.

Further, I should point out that I have always been most concerned about the future, rather than present supply of and demand for armor-piercing bullets, and this new legislation addresses the meat of that concern.

Second, I am worried that the exemption in the bill for any projectile which the Treasury Secretary finds is primarily intended to be used for sporting purposes, is open to broad interpretation. Yet, I recognize the importance of this exemption and I am reassured by administration sentiment that even with this exemption, each of the original eight bullets I had identified as armor-piercing would be banned under the new proposal.

Finally, it is my hope that arrangements can be worked out under this new legislation which would allow law enforcement equipment suppliers, such as soft body armor manufacturers, to continue to have access to this ammunition for test purposes.

In addition, businesses, such as Forensic Ammunition Service of Spring Arbor, MI, which supply armor-piercing ammunition to law enforcement agencies around the country for forensic test purposes, should be allowed to have continued access to this type of ammunition, but only with the consent and supervision of the Treasury Secretary.

Mr. Chairman, while H.R. 5835 may not offer the perfect solution to a very critical problem, I would like to suggest that there are very few perfect solutions to any problem. Frankly, having worked so long and hard for a Federal ban on cop-killer bullets, I am convinced that H.R. 5835 is about as good a solution as we can hope to get on this issue.

I believe it will accomplish the original goal I set out to achieve—namely, better police protection—without infringing upon the rights of legitimate gun users.

Just as important, it is a proposal that has a real chance for swift congressional action, especially considering the full support it has from the administration and the fact that a similar Senate proposal, S. 2766, has already received the cosponsorship of more than 80 Senators.

My bill, H.R. 5835, has more than 130 House cosponsors, both Republicans and Democrats, and I am further encouraged by your long stated commitment to resolving the cop killer bullet problem, Mr. Chairman.

In fact, I want to applaud your diligent and responsible efforts to secure a workable solution to this perplexing issue. I am convinced that if not for the constant pressure you placed on the administration to develop a workable proposal by the end of this month, we would not have reached this critical juncture today. Your outspoken support for a ban agianst cop killer bullets, and the support of other members of this subcommittee, demonstrates a high regard for the safety of all law enforcement personnel.

On behalf of the law enforcement community, with whom I have worked so closely on this issue, I wish to thank you for that support. I would hope that we can soon all sit back proudly with the knowledge that we have helped to protect police from the dangers posed by cop killer bullets. The passage of H.R. 5835, after careful deliberation, would allow that to happen.

[The statement of Mr. Biaggi follows:]

NEWS

FROM CONGRESSMAN

MARIO BIAGGI

19TH CONGRESSIONAL DISTRICT, N.Y. BRONX AND YONKERS

June 27, 1984

TESTIMONY ON ARMOR-PIERCING "COP KILLER" BULLETS PRESENTED BEFORE THE HOUSE SUBCOMMITTEE ON CRIME BY U.S. REP. MARIO BIAGGI OF NEW YORK

Mr. Chairman, nearly five years ago I initiated a legislative effort to outlaw armor-piercing "cop killer' bullets that can penetrate the bulletproof vests worn by more than half of our nation's 570,000 law enforcement officers. As I make my third appearance before your distinguished Subcommittee, I have the highest level of confidence that we are fast approaching successful completion of that task. This confidence is based on the fact that we have achieved a workable solution that can be supported by all. But, most importantly, the legislative product we are considering today would help save police lives. As a 23-year police veteran, that has been my single objective from the outset.

This new legislation, H.R. 5835, which I have introduced with more than 130 of my colleagues, was develpped jointly by the U.S. Treasury and Justice Departments; it has the support of the law enforcement community; and it is my understanding that even the National Rifle Association has assured the Administration they would not oppose this new language.

Personally, I am satisfied that this consensus legislation is a viable and effective alternative to my original bill, H.R. 953, which I introduced over two years ago. More precisely, both bills have the same two basic components--they would outlaw the manufacture and importation of armor-piercing handgun ammunition, with certain exceptions; and they would establish tough mandatory prison terms for persons who commit crimes with this ammunition.

Under this new bill, armor-piercing ammunition would be defined by its design--namely, the harder metals these awesome projectiles are made from--rather than by a standard of penetration, as used in H.R. 953. This is a significant difference since it had been argued that some bullets used for sporting purposes could have exceeded the standard set in H.R. 953. The new bill defines the term "armor piercing ammunition" as "solid projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium copper, depleted uranium." Administration officials who drafted this new legislation and who will be responsible for its enforcement have stated that this proposed definition would cover all armor-piercing ammunition which is currently known to exist. It is also intended to cover any new armor-piercing bullets that might be developed.

I am pleased to report that this same approach was also recommended by Detective Richard Janelli, a firearms expert for the Nassau County (NY) Police Department, who has worked closely with the Grumman Corporation in arriving at a precise definition of armor-piercing ammunition. It should be noted that Det. Janelli's work was initiated after Nassau County police arrested a suspected bank robber, who possessed 32 armor-piercing handgun rounds.

(more)

Especially significant are specific exemptions in the bill for "shotgun shot" used by hunters, "frangible projectiles designed for target shooting," and "any projectile which the (Treasury) Secretary finds is primarily intended to be used for sporting purposes." These exemptions are designed to ensure that ammunition used primarily for sporting purposes is not affected in any way by this legislation. This had also been the intent of H.R. 953, but it was not specifically stated in the bill.

Several other differences between H.R. 5835 and H.R. 953 should be noted. First, this new legislation bans the future manufacture and importation of armor-piercing ammunition, but not the sale, as proposed under H.R. 953. Second, unlike H.R. 953, the new bill would allow armor-piercing ammunition to be manufactured for export purposes, in addition to providing unrestricted access to armor-piercing ammunition for federal, state and local governmental units, which would include the law enforcement and military communities.

Third, unlike the old bill, H.R. 5835 would establish a new $1,000 license fee for those persons who wish to manufacture or import armor-piercing ammunition for the special purposes listed in the bill.

Finally, the new bill establishes a minimum mandatory five-year prison sentence for persons who use armor-piercing ammunition in a crime. H.R. 953 had proposed a one-to-10 year mandatory penalty for such crimes.

Mr. Chairman, I would be remiss if I did not qualify my support for this new legislation. First, I would prefer to include a ban on the sale of "cop killer" bullets, as well as manufacture and importation. However, Administration officials have argued convincingly that the gun dealer does not have the ability or resources to determine whether a bullet is armor-piercing or not. Instead, they must depend on their supplier, either the manufacture or importer for that determination. While that is sound logic, I would urge Treasury and Justice officials to encourage gun dealers to voluntarily do whatever is possible to keep those bullets out of the hands of criminals. Further, I should point out that I have always been most concerned about the future, rather than present supply of and demand for armor-piercing bullets and this new legislation addresses the meat of that concern.

Second, I am worried that the exemption in the bill for "any projectile which the (Treasury) Secretary finds is primarily intended to be used for sporting purposes," is open to broad interpretation. Yet, I recognize the importance of this exemption and I am reassured by Administration sentiment that even with this exemption, each of the original eight bullets I had identified as armor-piercing would be banned under this new proposal.

Finally, it is my hope that arrangements can be worked out under this new legislation which would allow law enforcement equipment suppliers, such as soft body armor manufacturers, to continue to have access to this ammunition for test purposes. In addition, businesses, such as Forensic Ammunition Service of Spring Arbor, Michigan, which supply armor-piercing ammunition to law enforcement agencies around the country for forensic test purposes, should be allowed continued access to this type of ammunition, but only with the consent and supervision of the Treasury Secretary.

Mr. Chairman, while H.R. 5835 may not offer the perfect solution to a very critical problem, I would like to suggest that there are very few perfect solutions to any problem. Frankly, having worked so long and hard for a federal ban on "cop killer" bullets, I am convinced that H.R. 5835 is about as good a solution as we can hope to get on this issue. I believe it will accomplish the original goal I set out to achieve--namely, better police protection--without infringing upon the rights of legitimate gun users. Just as important, it is a proposal that has a real chance for swift congressional action, especially considering the full support it has from the Administration and the fact that a similar Senate proposal, S. 2766, has already received the cosponsorship of more

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than 80 senators. My bill, H.R. 5835, has more than 130 House cosponsors, both Republicans and Democrats, and I am further encouraged by your long stated commitment to resolving the "cop killer" bullet problem, Mr. Chairman.

In fact, I want to applaud your diligent and responsible efforts to secure a workable solution to this perplexing issue. I am convinced that if not for the constant pressure you placed on the Administration to develop a workable proposal by the end of this month, we would not have reached the critical juncture today. Your outspoken support for a ban against "cop killer" bullets, and the support of other members of this subcommittee, demonstrate a high regard for the safety of all law enforcement personnel. On behalf of the law enforcement community, with whom I have worked so closely on this issue, I want to thank you for that support. I would hope that we can soon all sit back proudly with the knowledge that we have helped to protect police from the dangers posed by "cop killer" bullets. The passage of H.R. 5835 would allow that to happen.

Mr. **Hughes**. Thank you very much, Mario.

Let me ask you, at least in the draft that I took home with me tonight, submitted by Treasury, there is a statement that the Department of Treasury had consulted with all interested parties in fashioning this legislation.

Now, as I indicated when I introduced you, certainly your interest in this is more than in passing. You have worked, I know, very closely with the law enforcement community over the last, you said 5 years—I am aware of your efforts certainly in the last several years. I just wondered whether you were consulted in any way during this process by the Department of Treasury?

Mr. **Biaggi**. I am grateful for that question, Mr. Chairman. It reflects an attitude that has permeated the entire undertaking. The answer is clearly no. If not for the law enforcement officials who were present at the White House meeting when the legislation was discussed this compromise would have come to my attention at a much later date. As a matter of fact, one of the law enforcement officials present at that meeting brought this proposal to me to see what my sentiments were with relation to it. And when they did present it to us, we reviewed it and thought it was satisfactory, and introduced it. For the record, it was the first bill introduced on this issue. It is 10 numbers ahead of other legislation.

But clearly, what that reflects to me is the attitude, the uncooperative attitude that I have met with, and I dare say the chairman has met with, from Treasury. I have never seen such conduct in my 16 years in the Congress from any agency, knowing full well of our deep interest, knowing full well of our knowledge of the issue, knowing full well that in the end the comments I would make would have some inordinate bearing on the subject, they chose to proceed in a circuitous manner. I am not naive enough to believe that it was done inadvertently. I feel highly offended by it as a Member of Congress, as an individual who has been closely involved with this issue for some five years.

It is not the kind of relationship that the Congress should have with any agency if we are to proceed in a productive fashion for the benefit of the people of our Nation.

Mr. **Hughes**. If it is any consolation, I might suggest to you—and perhaps it will not be a consolation—this committee was not consulted either, even though we have a decided interest in the matter. After all, it is going to be this subcommittee that has to act on any such proposal.

I might say that at one point we considered subpoenaing some of the witnesses to try to get some technical assistance. We were informed at one point, 3 weeks ago, that the Justice Department would not make any of the technical people available, when we were thinking in terms of hiring a consultant so that we could endeavor get the technical help that we needed in drafting legislation that made sense, that would be well balanced, that would balance the interests of trying to protect the law enforcement community, and at the same time would not trample on the rights of legitimate hunters and sportsmen—and we were denied that.

It might be of interest to you to know that the first time I saw the proposal was after the fact and it came to me through a Member who received it from the National Rifle Association. That is the first inkling I had that the proposal had been drafted and was being circulated.

So when we talk about interested parties, certainly you have every interest in the matter, since you provided the leadership that has focused attention upon the problem. And this committee certainly has a great interest in it, we have expressed it a number of times, as you well know, because you were frustrated with the activities of this committee. I know three times a week you asked me on the floor over the last year and a half, what is happening with armor-piercing ammunition?

I have been very reluctant to move ahead with the gentleman from New York's legislation because I had some concerns as to whether or not we really had a standard that made sense. I am convinced that it is the pressure that we brought to bear on the issue that we are here with any kind of consensus.

Now, let me ask you in another area: I have looked over this definition and I have read it, and reread it, in the last week. I am not an expert by any stretch of the imagination, I don't have the technical expertise, and I have to rely on experts to try to advise me. But it seems to me that the definition has so many gaps that you could drive a truck through it.

For instance, what concerns me most is that the Justice Department was developing a standard which seemed to me to make sense. Justice has been telling me for 2 years that they were developing a standard using aluminum plates to determine, first of all, some basic standard to be able to judge ammunition by, as to whether it is truly armor piercing.

What this definition does is in effect talk in terms of the composition of the projectile and it names a number of metals and indicates that any one of those metals, in combination, fall within the definition. And if there is, in fact, anything but a trace of any other metals, whether lead, or whether manganese, or whatever, why, it then falls outside the definition.

I wonder if my colleague has thought about that at all?

Mr. Biaggi. Yes, I have, and that is one of the reasons, Mr. Chairman, that I supported the bill in its concept but also, if you recall in my testimony, that I wasn't in a rush to get the legislation moving without considering all of the possibilities and without this hearing being completed.

There are questions, and you raised a very logical question.

Mr. Hughes. Let me give you a specific. One of the first things that we heard about when we first got into this issue was the so-called KTW bullet.

If I were a defense attorney, I would raise a very serious question as to whether the KTW bullet is really covered. And yet, it was the KTW bullet that enabled us to focus in on this issue to begin with, because there is no reference whatsoever to teflon, you know, whether it is coated or not.

I could make an argument on the other side also, but I could certainly make a good argument that the KTW bullet would not be covered. But, certainly, much of the ammunition that could be manufactured that would have some lead, and there are some foreign countries that manufacture ammunition that would penetrate kevlar, soft body armor, but which would have lead in the center of it, such as this type of ammunition, which is still armor piercing, which, in my judgment, wouldn't be covered by the definition.

Mr. **Biaggi**. I don't know the bullet you have but it may have——

Mr. **Hughes**. Made in Sweden.

Mr. **Biaggi** [continuing]. A hard metal casing?

Mr. **Hughes**. Yes, hard metal casing, but it is not solid hard metal.

Mr. **Biaggi**. That would pose a problem.

Mr. **Hughes**. But it is still armor piercing and would flunk the test that was being developed by Justice, and Treasury, I might say.

And if I read the proposed legislation and the standard, it would seem to me that if any other metal, other than just a trace metal, is incorporated aside from the tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium, any others——

Mr. **Biaggi**. Would be exempt.

Mr. **Hughes** [continuing]. It would be exempt.

Mr. **Biaggi**. That is correct. I am not so sure that is exactly what we want. That is why I think it is important that the issue be raised and discussed, and why it is important that we have some further technical contribution.

Mr. **Hughes**. It also has occurred to me—and I don't know, I am going to ask Treasury and Justice—it also occurs to me that what has happened is it seems to me they have taken what the manufacturers have already agreed will not be marketed through retail dealers to the public and come up with a definition that would describe what has already been voluntarily discontinued for public marketing.

Mr. **Biaggi**. I don't know if that is completely adequate, Mr. Chairman. I know that some manufacturers have discontinued. I spoke to them early on and when I raised the issue, they weren't aware of it, really, because it was a new development, because of the advent of the bulletproof vest, and they said they would discontinue the production of those armor-piercing bullets.

Now, I don't know about the rest of the munitions manufacturers in the Nation, but——

Mr. **Hughes**. I suspect we are going to find, however, that there are very few manufacturers of armor-piercing ammunition meeting this definition who haven't already agreed voluntarily not to market it through retailers.

Mr. **Biaggi**. If that be the case, then what the chairman suggests is that this legislation is really meaningless.

Mr. **Hughes**. I am not suggesting that, I am just saying I don't know. I have talked, and my staff has talked, with a lot of experts, some within Government and some outside of Government. Obviously, those in Government don't want to come forward. But we have talked with a number of experts, and that would seem to be the situation, that the vast majority of armor-piercing ammunition is not going to be reached by this, that this reaches a very small amount of special ammunition which the manufacturers have already agreed that they are not going to market for public consumption; they will furnish it to military and for the law enforcement community.

Mr. Biaggi. If that be the case, Mr. Chairman, if the committee and the staff finds that to be the case; then clearly while we are in the process of deliberating over this legislation it should be amended to provide police with more meaningful protection.

Mr. Hughes. It will be interesting because those are the things we are going to see if we can't take a look at today.

I want to tell you that I appreciate your leadership and as I indicated earlier, I know the law enforcement community has appreciated your leadership. I look forward to continuing to work with you. As far as I am concerned, you have been the key player in trying to develop legislation that makes sense.

Mr. Biaggi. I want to thank you, Mr. Chairman, you have been a very formidable ally. When not too many voices were present, your steadfast position was appreciated, not only by myself, but by law enforcement. I don't miss an occasion to bring that point home. Hopefully, this legislation will develop and we will provide the kind of protection that the police are rightly entitled to.

I will be proud to have been the author of the legislation but, more importantly, it will be a personally satisfying accomplishment. In a sense, I will not have severed the umbilical cord with my former law enforcement colleagues, and every time a police officer is saved because of a bulletproof vest, because of its effectiveness, and because of the absence of armor-piercing bullets, I will be able to smile inwardly.

I thank you very much, Mr. Chairman.

Mr. Hughes. Thank you, Mario.

Our next witnesses will sit as a panel. We have John M. Walker, Jr., the Assistant Secretary of the Treasury for Enforcement and Operations, of the U.S. Department of the Treasury; and Jay B. Stephens, deputy associate attorney general, U.S. Department of Justice.

Mr. Walker supervises the Bureau of Alcohol, Tobacco and Firearms, for which this subcommittee has oversight jurisdiction; the Secret Service, the U.S. Customs Service, and the Federal Law Enforcement Training Center in Glynco, GA.

Mr. Walker is a graduate of Yale University and the University of Michigan Law School. He was an assistant U.S. attorney in the southern district of New York and later in private practice in New York before being appointed to his position in 1981.

Mr. Stephens was named to his position last summer. Prior to his present position, he was special counsel to the assistant attorney general for the Criminal Division and assistant U.S. attorney for the District of Columbia, and an assistant special prosecutor in the Watergate Special Prosecution Force.

He is a graduate of Harvard College and Harvard Law School.

Gentlemen, we welcome you here this morning. We have your statements which, without objection, will be made a part of the record, and you may proceed as you see fit.

Mr. Walker, why don't we begin with you? Welcome.

TESTIMONY OF JOHN M. WALKER, JR., ASSISTANT SECRETARY (ENFORCEMENT AND OPERATIONS), U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY EDWARD OWEN, CHIEF, FIREARMS TECHNOLOGY BRANCH, ATF, AND JAY STEPHENS, DEPUTY ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. **Walker**. Thank you very much, Mr. Chairman.

Mr. Chairman, on my left I have with me Edward Owen, who is the Chief of the Firearms Technology Branch of ATF. Mr. Owen can respond with much greater expertise than I have to technical questions the committee may have.

Mr. Chairman and members of the subcommittee:

We are pleased to appear before you today to again explore the subject of armor-piercing ammunition and certain legislative proposals to address the potential threat that this ammunition poses to the safety of law enforcement personnel.

I am particularly pleased to be able to report on the administration's proposal, H.R. 5845, to regulate the manufacture and importation of armor-piercing ammunition.

Now, as you know, this bill is the successful culmination of a long and strenuous effort by the administration, working with Congress, to find an appropriate and enforceable definition of armor-piercing projectiles. By appropriate, I mean a definition which would successfully balance the needs of law-abiding sportsmen and hunters with the important law enforcement goal of providing police officers with assurance that their soft body armor will afford greater protection against gunfire from the criminal element.

When former Deputy Assistant Secretary of the Treasury for Enforcement Robert Powis testified on May 17 before this subcommittee on this issue, he explained in detail the efforts of the administration to respond to the potential danger of this ammunition to law enforcement officers.

He pointed out that, even before formulating the administration's legislative proposal, which is now incorporated into H.R. 5845, Treasury had already achieved substantial control over this ammunition by securing the voluntary compliance of manufacturers.

In particular, Treasury sought and obtained voluntary agreements with manufacturers and importers of certain specifically designed types of armor-piercing ammunition.

Under the agreements, manufacturers and importers may sell this type of ammunition only to the military establishment and to official Federal, State and local law enforcement agencies, or to foreign governments as authorized by law.

To the best of our knowledge, all of the manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition.

In addition, the administration had proposed legislation, as part of the comprehensive crime control bill, that would impose a mandatory prison sentence of not less than 5 nor more than 10 years for an individual that uses or carries, during or in relation to the commission of a crime of violence, a handgun loaded with armor-piercing ammunition.

The substance of this proposal has been incorporated into H.R. 5845. This administration strongly believes that an enhanced, mandatory penalty is an essential deterrent to the criminal use of armor-piercing ammunition.

The administration explored various ways to incorporate the previously mentioned voluntary agreements into a legislative proposal. The difficulty has been in fashioning a definition of armor-piercing ammunition that would achieve the balance, referred to earlier, between law enforcement and recreational goals.

With the participation of the Justice Department and the Bureau of Alcohol, Tobacco and Firearms, the administration has, we believe, accomplished this task in H.R. 5845 through a definition of armor-piercing ammunition that is based on the composition of the projectile. This definition will, we believe, accomplish two essential goals.

First, it will minimize Government testing necessary to determine whether ammunition would be subject to restriction under Federal law. And I might add, Mr. Chairman, that this testing is imperfect, an imperfect art.

Second, the bill defines the term in a way that can be easily understood by industry and the public. Thus, we believe the definition will be more workable and enforceable than those previously considered by this subcommittee.

Specifically, our proposal would amend chapter 44, title 18, United States Code, to prohibit the manufacture and importation of armor-piercing ammunition with certain narrow exceptions.

Under the bill, the term "armor-piercing ammunition" refers to solid projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium cooper, or depleted uranium.

The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, or any projectile which the Secretary of the Treasury determines is primarily intended to be used for sporting purposes.

The term "solid" is used in the definition refers to projectiles or cores made entirely from one or more of the substances specified, but may include the presence of trace elements of other substances.

By means of this definition, the administration's proposal would prohibit importation and manufacture of all of the ammunition that is currently specifically designed to be armor-piercing. Included in this category are KTW and certain other armor-piercing ammunition.

At the same time this proposal would permit the manufacture and importation of other ammunition that is not designed to be armor-piercing and that has legitimate use for sporting purposes.

As I mentioned earlier, the ban on the importation or manufacture of armor-piercing ammunition does not apply to exportation or manufacture or importation solely for Government entities. By restricting the manufacture and importation of ammunition to distribution to these Government entities, the bill restricts access to those for whom the product was originally developed.

Moreover, under the legislation, fees for licenses for manufacturers and importers of armor-piercing ammunition would be raised to a level commensurate with those required of licensees who manufacture and import destructive devices.

This will help ensure that only those who intend to do a bona fide business in armor-piercing ammunition with Government agencies would be licensed to import and manufacture the ammunition.

Finally, as I have mentioned, a crucial feature of the bill is the imposition of a mandatory prison sentence of not less than 5 years for an individual who, during and in relation to the commission of a violent felony, uses or carries a firearm and is in possession of armor-piercing ammunition capable of being fired in that firearm.

"Violent felony" means a felony that may be prosecuted in a court of the United States and that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

The term also includes any other felony that may be prosecuted in a court of the United States and that, by its nature, involves the substantial risk that physical force against another person or property may be used in the course of its commission.

The sentence imposed would be in addition to the punishment provided for the commission of the violent felony and could not be served concurrently with any other sentence, including that imposed for the underlying felony.

A person sentenced under this section cannot have the sentence suspended, cannot be placed on probation, and cannot be eligible for parole during the term of imprisonment. This provision is similar to the proposal contained in the Comprehensive Crime Control bill of 1984.

This administration believes that mandatory penalties are appropriate for this type of offense. Enactment of this provision will serve notice on criminals that if they commit a violent Federal crime while in possession of armor-piercing ammunition, they will be dealt with severely.

In conclusion, Mr. Chairman, H.R. 5845 as proposed by the administration effectively addresses the problem of armor-piercing ammunition without imposing on the Government or on ammunition importers and manufacturers an unenforceable regulatory and testing process. It also takes into consideration the legitimate use of ammunition for sport and recreation.

We recognize that there are no perfect solutions to this difficult problem, but we are convinced that the administration's proposal is the most practical and effective way to cope with this potential threat to the safety of law enforcement officers.

The administration proposal has received the support of the following major law enforcement organizations: The International Association of Chiefs of Police, the Fraternal Order of Police, the National Association of Police Organizations, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum. Because it does not impact on conventional sporting ammunition, H.R. 5845 is also supported by the overwhelming majority of America's hunting and sporting community.

Mr. Chairman, it is my understanding that the companion Senate bill, S. 2766, sponsored by 82 Senators, and actually I now believe the number is 84, could achieve passage this week and that H.R. 5845, which now has 156 sponsors, including Congressmen Brooks, Fish, Conte, Dingell, Michel, and Lott, enjoys broad bipartisan support in the House of Representatives.

I am also aware of H.R. 5835 and H.R. 5844 introduced by Congressman Biaggi and by Congressmen Fish and Michel respectively. These bills are based on the administration's proposal and are virtually identical to H.R. 5845.

Like many other statutes, this bill is the result of extensive and careful analysis and discussion among all interested parties and the private sector. Thus, modification of H.R. 5845 runs the risk of diminishing the broad bipartisan support which H.R. 5845 has received and is receiving today.

I urge the committee to report favorably on H.R. 5845 in its present form so that we can, without further delay, provide statutory protection for police officers against the potential danger of armor-piercing ammunition.

Mr. Chairman and members of the subcommittee, this concludes my prepared statement. I would be most pleased to answer any questions you have either at this time or at the time that Mr. Stephens finishes his statement.

Mr. HUGHES. Thank you, Mr. Walker.

[The statement of Mr. Walker follows:]

STATEMENT OF THE HONORABLE JOHN M. WALKER, JR.
ASSISTANT SECRETARY (ENFORCEMENT AND OPERATIONS)
DEPARTMENT OF THE TREASURY
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
JUNE 27, 1984

Mr. Chairman and members of the Subcommittee, we are pleased to appear before you today to again explore the subject of armor-piercing ammunition and certain legislative proposals to address the potential threat that this ammunition poses to the safety of law enforcement personnel. I am particularly pleased to be able to report on the Administration's proposal, H.R. 5845, to regulate the manufacture and importation of armor-piercing ammunition. As you know, this bill is the successful culmination of a long and strenuous effort by the Administration to find an appropriate and enforceable definition of armor-piercing projectiles. By appropriate I mean a definition which would successfully balance the needs of law-abiding sportsmen and hunters with the important law enforcement goal of providing police officers with assurance that their soft-body armor will afford greater protection against gunfire from the criminal element.

When former Deputy Assistant Secretary of the Treasury for Enforcement Robert Powis testified on May 17 on this issue, before this Committee, he explained in detail the efforts of the Administration to respond to the potential danger of this ammunition to law enforcement officers. He pointed out that, even before formulating the Administration's legislative proposal, which is now incorporated in H.R. 5845, Treasury had already achieved substantial control over this ammunition by securing the voluntary compliance of manufacturers. In particular, Treasury sought and obtained voluntary agreements with manufacturers and importers of certain specifically-designed types of armor-piercing ammunition. Under the agreements, manufacturers and importers may sell this type of ammunition only to the military establishment and to official Federal, State and local law enforcement agencies, or to foreign governments as authorized by law. To the best of our knowledge, all of the manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition.

In addition, the Administration had proposed legislation, as part of the Comprehensive Crime Control Bill, that would impose a mandatory prison sentence of not less than 5 nor more than 10 years for an individual who uses or carries, during or in relation to the commission of a crime of violence, a handgun loaded with armor-piercing ammunition. The substance of this proposal has been incorporated into H.R. 5845. This Administration strongly believes that an enhanced, mandatory penalty is an essential deterrent to the criminal use of armor-piercing ammunition.

The Administration explored various ways to incorporate the previously-mentioned voluntary agreements into a legislative proposal. The difficulty has been in fashioning a definition of armor-piercing ammunition that would achieve the balance, referred to earlier, between law enforcement and recreational goals. With the participation of the Justice Department and the Bureau of Alcohol, Tobacco and Firearms, the Administration has, we believe, accomplished this task in H.R. 5845 through a definition of armor-piercing ammunition that is based on the composition of the projectile. This definition will, we believe, accomplish two essential goals. First, it will minimize Government testing necessary to determine whether ammunition would be subject to restriction under Federal law. Second, the bill defines the term in a way that can be easily understood by industry and the public. Thus, we believe the definition will be more workable and enforceable than those previously considered by the Committee.

Specifically, our proposal would amend Chapter 44, Title 18, United States Code, to prohibit the manufacture and importation of armor-piercing ammunition with certain narrow exceptions. Under the bill, the term "armor-piercing ammunition" refers to solid projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, or any projectile which the Secretary of the Treasury determines is primarily intended to be used for sporting purposes. The term "solid" as used in the definition refers to projectiles or cores made entirely from one or more of the substances specified, but may include the presence of trace elements of other substances.

By means of this definition, the Administration's proposal would prohibit importation and manufacture of all of the ammunition that is specifically designed to be armor-piercing. Included in this category are KTW and certain other armor-piercing ammunition. At the same time, this proposal would permit the manufacture and importation of other ammunition that is not designed to be armor-piercing and that has legitimate use for sporting purposes.

As I mentioned earlier, the ban on the importation or manufacture of armor-piercing ammunition does not apply to exportation or manufacture or importation solely for governmental entities. By restricting the manufacture and importation of ammunition to distribution to these government entities, the bill restricts access to those for whom the product was originally developed. Moreover, under the legislation, fees for licenses for manufacturers and importers of armor-piercing ammunition would be raised to a level commensurate with those required of licensees who manufacture and import destructive devices. This will help ensure that only those who intend to do a bona-fide business in armor-piercing ammunition with Government agencies would be licensed to import and manufacture the ammunition.

Finally, as I have mentioned, a crucial feature of the bill is the imposition of a mandatory prison sentence of not less than 5 years for an individual who, during and in relation to the commission of a violent felony, uses or carries a firearm and is in possession of armor-piercing ammunition capable of being fired in that firearm. "Violent felony" means a felony that may be prosecuted in a court of the United States and that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. The term also includes any other felony that may be prosecuted in a court of the United States and that, by its nature, involves the substantial risk that physical force against another person or property may be used in the course of its commission. The sentence imposed would be in addition to the punishment provided for the commission of the violent felony and could not be served concurrently with any other sentence, including that imposed for the underlying felony. A person sentenced under this section cannot have the sentence suspended, cannot be placed on probation, and cannot be eligible for parole during the term of imprisonment. This provision is similar to the proposal contained in the Comprehensive Crime Control Bill of 1984.

This Administration believes that mandatory penalties are appropriate for this type of offense. Enactment of this provision will serve notice on criminals that if they commit a violent Federal crime while in possession of armor-piercing ammunition, they will be dealt with severely.

In conclusion, Mr. Chairman, H.R. 5845 as proposed by the Administration effectively addresses the problem of armor-piercing ammunition without imposing on the Government or on ammunition importers and manufacturers an unenforceable regulatory and testing process. It also takes into consideration the legitimate use of ammunition for sport and recreation. We recognize that there are no perfect solutions to this difficult problem, but we are convinced that the Administration's proposal is the most practical and effective way to cope with this potential threat to the safety of law enforcement officers.

The Administration proposal has received the support of the following major law enforcement organizations: the International Association of Chiefs of Police, the Fraternal Order of Police, the National Association of Police Organizations, the National Sheriff's Association, the National Organization of Black Law Enforcement Executives, and the Police Executive

Research Forum. Because it does not impact on conventional sporting ammunition, H.R. 5845 is also supported by the overwhelming majority of America's hunting and sporting community.

Mr. Chairman, it is my understanding that the companion Senate Bill, S. 2766, sponsored by 82 Senators, could achieve passage this week and that H.R. 5845, which now has 156 sponsors, including Congressmen Brooks, Fish, Conte, Dingell, Michel and Lott, enjoys broad bipartisam support in the House of Representatives. I am also aware of H.R. 5835 and 5844 introduced by Congressman Biaggi and by Congressmen Fish and Michel respectively. These bills are based upon the Administration's proposal and are virtually identical to H.R. 5845.

Like many other statutes, this bill is the result of extensive and careful analysis and discussion among all interested parties. Thus, modification of H.R. 5845 runs the risk of diminishing the broad bipartisan support which H.R. 5845 has received. I urge the Committee to report favorably on H.R. 5845 in its present form so that we can, without further delay, provide statutory protection for police officers against the potential danger of armor-piercing ammunition.

Mr. Chairman and members of the Subcommittee, this concludes my prepared statement. I would be most pleased to answer any questions you may have.

Mr. HUGHES. I think if it is agreeable, we will defer the questions until after Mr. Stephens gives his statement in chief. Mr. Stephens, welcome.

Mr. STEPHENS. Thank you very much, Mr. Chairman. I certainly welcome the opportunity to appear again before this subcommittee to express strong support for the administration's proposal to ban the manufacture and importation of armor-piercing ammunition. We believe this proposal, this legislation, closes an important gap and will provide necessary protection for our law enforcement officers.

The support which this proposal has received from law enforcement groups and Members of Congress has been most encouraging, and it really gives us hope that during this session of Congress we can enact some legislation in this important area.

As you know, we have been concerned for some substantial period of time regarding the threat which armor-piercing ammunition poses for law enforcement officers. Those who wear soft body armor have that added degree of protection but it is important we provide that when they are wearing such armor that they are not subject to this type of ammunition which could endanger their lives. Such armor-piercing ammunition really serves no legitimate sporting purpose or self-defense purpose, and it poses a needless danger to our law enforcement officers.

Back in 1982, when the then Associate Attorney General testified in support of the concept of a ban on armor-piercing ammunition or the manufacture and importation of such ammunition, we had some problems at the Department of Justice with the definition of that. As an interim measure we proposed a mandatory minimum penalty for those who use armor-piercing ammunition during the course of a felony offense. That proposal, which in summary, provides that individuals who use or have in their possession such types of armor-piercing ammunition during the course of a Federal crime of violence are subject to a prison sentence of 5 years. That is a sentence which is in addition to the underlying sentence imposed for the violent felony. Now, this sentence is imposed in addition to that sentence; it is truly mandatory; it is not subject to reduction; it is not subject to suspension, probation, or parole.

We believe, as we did 2 years ago when we first presented this proposal, that the mandatory minimum provision is an effective deterrent to the use of armor-piercing bullets by criminals. And as you know, Mr. Chairman, the mandatory minimum sentence provision is part of the Comprehensive Crime Control Act which was submitted to Congress by the President in March of 1983. That proposal was favorably reported by the Senate Judiciary Committee and was passed as part of the package, S. 1762, which was passed by the U.S. Senate 91 to 1, and is currently awaiting action here in the House.

But during the period of time that we had worked on the mandatory minimum legislative proposal, we also continued to work to try to develop an appropriate and workable definition regarding armor-piercing bullets and armor-piercing ammunition, and to try to incorporate those into legislation which would ban the manufacture and importation of those types of bullets.

It has not been an easy task; it has been problematic in many ways, but we have continued to support and push for some type of effective legislation in this area.

I testified in the Senate on March 7 before Senator Laxalt's subcommittee. We there supported the concept of this legislation; we were working at that time on a definition which would be suitable and which we could in fact enforce.

As I testified here before yourself on May 24, we expressed our continuing support for legislation in this area, and were working diligently to try to come to some solution.

I might add that subsequent to that hearing before the chairman, we had an opportunity to meet with members of your staff to try to work through some of the problems that we were encountering to explain to them in more detail some of the issues that we saw and some of the difficulties which we faced.

We also expressed to them as we had expressed to you during the course of the hearing on the 24th, that we were optimistic; that we thought we could get some legislation in this area. And, in fact, I think we expressed to them that we anticipated some action by the administration in the very near future.

Given the commitment which we have made to this effort, it certainly is gratifying that we have come, what I believe, to a solution which is acceptable and which provides the necessary definition, the language, and the necessary penalties to ban the importation and the manufacturing of this type of ammunition which poses a significant danger to our law enforcement personnel.

In that regard, as has been explained previously, all armor-piercing ammunition of which we are aware are composed of dense metals, dense alloys, metal alloys, which possess hardness, they resist deformation upon impact. So when you get the combination of the weight and resistance to expansion upon impact, it gives these projectiles, which are made of these particular hard materials, a great penetration ability.

We have reviewed, as I pointed out in testimony on May 24, a number of approaches to this problem. We have determined that a design definition based upon a metallic composition really offers the best answer to this longstanding problem with which a number of people have grappled; a number of people have tried diligently to come to a solution to this problem.

The definition which we have here in H.R. 5845 is a workable and enforceable definition. We believe it reaches that ammunition which is truly armor-piercing; it provides a definition that the Department of Treasury advises us they can work with on an enforcement basis. It also provides a definition that has sufficient precision and verification that you can use it effectively in the course of a criminal prosecution where you may need to call an expert witness in order to define the type of ammunition which was used in the course of an offense.

Given those kinds of considerations, we believe we have arrived at a result here which deserves broad base support by the law enforcement officers and by those citizens who are genuinely concerned about banning the importation and manufacture of this kind of ammunition.

It is indeed gratifying to be here in support of the administration's bill on behalf of the Department of Justice. We would urge speedy passage of this bill. We think it is important that we get some action on it. We know we have struggled with it over a long period of time; we think we have arrived at a solution which has a very broad base of support. We would certainly urge the subcommittee's speedy consideration of this, and then passage by the U.S. Congress.

Thank you very much, Mr. Chairman. I would be happy to address any questions which the chairman may have.

[The statement of Mr. Stephens follows:]

STATEMENT

OF

JAY STEPHENS
DEPUTY ASSOCIATE ATTORNEY GENERAL

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

ARMOR PIERCING BULLETS

ON

JUNE 27, 1984

Mr. Chairman and Members of the Subcommittee --

I welcome this opportunity to appear again before the Subcommittee today to express the strong support of the Administration for legislation, H.R. 5845, to ban the manufacture or importation of certain ammunition capable of penetrating the soft body armor worn by law enforcement officials. This proposal closely tracks and contains technical improvements in the Administration proposal submitted by the Administration. The support our proposal has received from law enforcement groups and Members of Congress has been most encouraging and gives us reason to hope that this legislation can be enacted this year.

As you know, we have long been concerned about the threat which armor-piercing bullets pose to law enforcement officers and others who wear soft body armor. Such armor-piercing ammunition, which serves no legitimate sporting or self-defense purpose, poses a needless danger to law enforcement officers. When then Associate Attorney General Giuliani appeared before this Subcommittee in May of 1982 he expressed the strong support of the Department of Justice for legislation to ban armor-piercing bullets. While noting the deficiencies in the definition of armor-piercing bullets contained in legislation then before the Congress, he unveiled our proposal for mandatory-minimum prison sentences for the criminal use of armor-piercing bullets and urged its approval pending development of legislation to ban unreasonably dangerous handgun bullets.

In summary, our proposal for mandatory-minimum sentences for criminal use of armor-piercing bullets would provide that individuals who use such dangerous ammunition during the course of a federal crime of violence would be subject to a prison sentence of five years in addition to the sentence imposed for the underlying offense. This would increase to ten years for a second or subsequent offense. The sentences so imposed would be truly mandatory and would not be subject to reduction, suspension, probation or parole. We believe, as we did more than two years ago when we first presented this proposal, that this mandatory-minimum provision would be a powerful deterrent to use of armor-piercing bullets by criminals.

As you know, our mandatory-minimum sentencing provision was included in the Comprehensive Crime Control Act submitted to the Congress by the President on March 16, 1983. This proposal was favorably reported by the Senate Judiciary Committee in July of 1983 and was approved by the Senate on February 2 of this year as part of S. 1762 which passed the Senate by the overwhelming bi-partisan vote of 91-1.

During the time our mandatory-minimum proposal was under review in the Congress, we were working to develop an appropriate and workable technical definition of armor-piercing bullets for incorporation in a bill to ban the manufacture or importation of such bullets. This has been a most difficult technical task in view of the need for precision to avoid inadvertently banning legitimate ammunition. When I testified on behalf of the Department before the Subcommittee on Criminal Law of the Senate Judiciary Committee on March 7 of this year, I noted the steps we had taken toward development of an acceptable definition of armor-piercing bullets and stated once again the commitment of the Department of Justice to submission of a draft bill to ban armor-piercing bullets. Again before this Subcommittee on May 24, I confirmed our continuing support for properly drafted legislation to ban armor-piercing bullets and reported that an Administration bill to achieve this goal would be forthcoming in the near future.

Given the more than two years of effort that we had devoted to this project, it was most gratifying when we were able to submit our draft Administration bill to ban armor-piercing bullets. The draft bill we submitted defines armor-piercing bullets from a design standpoint focusing upon the metallic composition of the projectile or projectile core. In this regard, all armor-piercing ammunition of which we are aware are composed of dense metals or metal alloys which possess such hardness that they resist deformation upon impact. The combination of weight and resistance to expansion upon impact give projectiles made of these materials great penetration capability. After a review of the various alternative approaches, we determined that a design definition based upon metallic composition offered the best answer to the longstanding problem of an appropriate definition of armor-piercing bullets.

We believe that the definition of armor-piercing bullets in the Administration proposal, H.R. 5845 is workable and enforceable. We also believe that it reaches all of the ammunition that should be prohibited. In addition to providing a definition with which the Department of the Treasury can work effectively, we believe the definition is precise and subject to verification through metalurgical analysis with the result that it can be enforced in a criminal prosecution of anyone who seeks to manufacture or import prohibited ammunition. We are thus entirely satisfied with this proposal and can without reservation recommend its enactment.

Again, it is gratifying to be here today in support of H.R. 5845. We believe that this legislation accomplishes the goals we have all sought to achieve for many months now -- development of a bill that would effectively ban bullets which pose an unreasonable threat to law enforcement officers but which does so in a precise manner that does not jeopardize legitimate ammunition. We respectfully urge the Congress to act quickly on this legislation. Because of the obligation we all share to protect the lives and safety of the men and women who serve as our front line of defense against crime and disorder, this armor-piercing bullet legislation deserves expeditious consideration and approval by the Congress.

Mr. HUGHES. Thank you, Mr. Stephens.

First, Mr. Walker, let me see if I can get something clarified. In my colloquy with Mr. Biaggi, I mentioned that in your statement on page 7 you indicate, "Like many other statutes," and I am reading verbatim, "this bill is the result of extensive and careful analysis and discussion among all interested parties."

Can you tell me who the interested parties are?

Mr. WALKER. Of course the police organizations are tremendously interested. They are probably the most interested parties because they are the ones who will be directly affected by this. The groups that we discussed this measure with were the International Association of the Chiefs of Police, the Fraternal Order of Police, the National Association of Police Organizations, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum. This proposal was discussed with them and their views were taken into consideration in formulating this.

There were other groups that were consulted and talked to, but those were the principal ones who were involved.

Mr. HUGHES. Let's talk about the groups that are interested parties. Give me the rest of the groups.

Mr. WALKER. I think one group is the National Rifle Association, a group that represents sportsmen and hunters. Their views were expressed through that group. They were consulted with and talked to.

I also spoke to Handgun Control, Inc., another group that seems interested in this legislation and has expressed some views on it and got their views.

I spoke to a number of others on the Hill on the subject, but the private groups are the ones that I was referring to in my statement.

Mr. HUGHES. Who in particular on the Hill? Any Members of Congress?

Mr. WALKER. Yes, we worked with the Senate Judiciary Committee as well. I know that Mr. Powis had appeared at hearings before this subcommittee and received the——

Mr. HUGHES. I am talking about this particular measure. Mr. Powis didn't testify, because I had a very difficult time trying to find out just exactly what you were discussing.

Who specifically on the Hill did you discuss it with?

Mr. WALKER. Members of my staff, I wasn't in conversation personally with that many, but members of my staff discussed this with, I know the Senate, and I believe with this committee—I believe with the Judiciary Committees of both sides.

Mr. HUGHES. I think you are wrong, nobody discussed it with my subcommittee.

Mr. WALKER. That surprises me if that is the case.

Mr. HUGHES. I am telling you it's the case.

Mr. WALKER. OK, I accept that, obviously.

Mr. HUGHES. How about Mr. Biaggi, do you think he is an interested party?

Mr. WALKER. Yes, I think he is.

Mr. HUGHES. Why wasn't Mr. Biaggi brought into the discussions?

Mr. **Walker**. I suppose we could have started, you know, done that.

Mr. **Hughes**. Is there anybody in this country that has been involved in this issue more than Mr. Biaggi?

Mr. **Walker**. I think Mr. Biaggi has been quite involved, but I think we may be talking now more—I mean, he seems to be in agreement with the substance of this bill.

Mr. **Hughes**. The Congress, under the Constitution, has a legitimate role to play. We are the folks that are going to have to develop a legislative initiative.

I noticed in your statement this morning that you orally amended your prepared testimony to include Congress, working with Congress. It wasn't part of your initial statement—you inserted that, you know—as you read, "As you know, this bill is the successful culmination of a long and strenuous effort by the administration to find an appropriate"—and you inserted "in the Congress." Almost like an afterthought.

The point is just this: This committee has for 2 years been trying to work upfront, in a bona fide way, with your agency and Justice in trying to develop something that made sense. Now, why is it that we had such a difficult time trying to find out about a consensus bill?

I had to get the consensus bill from a Member who got it from the National Rifle Association. Why is it that my staff and myself could not become privy to these discussions so that we could give our own input?

For instance, I articulated some concerns. I am concerned about your use of the term "solid" and some of the problems that I see that you are going to have in interpretation with that term. It may very well be that we could have given some insight into our own concerns because it is going to be this subcommittee that ends up fashioning a final bill.

Mr. **Walker**. Sure.

Mr. **Hughes**. Aren't we an interested party?

Mr. **Walker**. Oh, absolutely, there is no question about it.

Mr. **Hughes**. Why weren't we consulted? Were you unaware of the fact that we were interested?

Mr. **Walker**. No, I don't think that that is the reason, Mr. Hughes. We have worked with your committee very closely on many matters and I don't think your committee and my office have had many differences over the years at all, on anything.

Mr. **Hughes**. We have had some differences, Mr. Walker——

Mr. **Walker**. Well, we may have had one or two, but generally they have been——

Mr. **Hughes** [continuing]. And they have often been political differences, you know——

Mr. **Walker**. Right.

Mr. **Hughes** [continuing]. Where there has been an effort to try to exploit something politically. We have tried to work in good faith with these agencies, your agency in particular.

Mr. **Walker**. Right. I think that when we——

Mr. **Hughes**. And I think that the manner in which you have approached this, and the circuitous fashion you have approached it, is probably the worst that I have seen in my 20 years in public life. I spent 10 years in law enforcement. I have never seen an effort to politicize it as you have in this instance.

You never mentioned Mr. Biaggi once in your initial statement. It was only when my staff asked you about your position on the Biaggi bill, that you went back and acknowledged that Mr. Biaggi has a passing interest in it.

Now, why? Is there something about Mr. Biaggi that presents a problem? Mr. Biaggi's bill, if I read it correctly, is basically your language.

Mr. **Walker**. Not only that, it is based on our proposal. I mean, we are totally supportive of it.

Mr. **Hughes**. I wouldn't have known that by reading your statement.

Mr. **Walker**. Mr. Biaggi explained that he saw the administration proposal and put it in the hopper. So, there is no way that we could ever disgree with Mr. Biaggi's bill that he introduced. Indeed, I suppose the real advantage, if you will, of our bill, and it may be the answer to your question, is that we feel that by proceeding in the manner we have proceeded in, we have achieved a broad bipartisan support—to the point now where we can come to the Congress, and I don't think that is a negative, come to the Congress with wide bipartisan support across the board in both the Senate and the House.

Mr. **Hughes**. What is the administration bill? Is the administration bill the Fish bill? Is it the Brooks bill?

Mr. **Walker**. Pick one, because they are all the same.

Mr. **Hughes**. That is the point I am trying to make. You know, why the obvious effort to exclude Mario Biaggi? I don't understand it.

Well, we have got a vote.

Mr. **Walker**. There is no effort to exclude Mario Biaggi.

Mr. **Hughes**. I don't read it that way.

Mr. **Walker**. OK.

Mr. **Hughes**. The subcommittee stands recessed for 10 minutes while we vote.

[Recess.]

Mr. **Hughes**. Mr. Stephens, I have here a copy of the bill which was represented to me as the Justice Department's proposal for addressing the problem of armor-piercing ammunition and today, obviously, you are not supporting this particular bill, which is just a draft that was shared with me.

I wonder if you can tell me just what has happened to this particular proposal because over the last couple of years when Justice was in and testified, and we have talked informally about this proposal—it was represented to me that it had cleared all through Justice and went to OMB for clearance. Then it wasn't clear as to what happened.

Was the proposal finally rejected because it was not meritorious? Was it because you couldn't get consensus? Just what happened to this particular proposal?

Mr. **Stephens**. Mr. Chairman, just for the record, the proposal you are referring to is which proposal? It is a draft so I am not sure what aspects are in that particular proposal to which you are referring.

Mr. HUGHES. I will share it with you.

Mr. STEPHENS. Thank you.

To address your general question regarding the propositions or proposals that were being considered by the Department as a means of addressing this problem, we obviously, as we had expressed before this subcommittee and in the Senate, were trying to arrive at a definition and we were having some difficulty working on that technically—where do you draw the line? How many plates are involved? What kind of fixtures do you use? Are they fixed fixtures? What are the variables? Are those variables enforceable in some way?

We come up with a draft concept of using the tests that were developed by NIJ; in the process of reviewing them, we recognized there were other agencies that were involved in the enforcement of these standards, particularly Treasury. So it was important that we obtain their views. And as I am sure the chairman is aware of the legislative review process, when we sat down together and asked if we were to use this type of approach, can you enforce this? We were getting responses, essentially, this is a difficult way of approaching this for enforcement reasons. We can't enforce this, there are too many variables here. Is there a way to do this in a simpler, more straightforward fashion?

And as we reflected on it, the question was: Can we approach this rather than having two tiers, *x* number of plates, and several types of weapons by trying to come up with some definition that is really more workable in a court if you eventually have to come down to using it in a court?

I think it was a good-faith effort on our part to try to arrive at some kind of a solution. But Treasury also needed to be able to be comfortable with enforcing that. And in the legislative process, we tried to work out something that everybody can work with and enforce in an effective way, and I think this is the result that we arrived at.

Mr. HUGHES. That particular proposal was based upon this publication, NBSIR 84-2884, submitted to the National Institute of Justice, but prepared by the U.S. Department of Commerce, National Bureau of Standards, Test Procedure for Armor-Piercing Handgun Ammunition.

Was that based on that particular work?

Mr. STEPHENS. I believe that is correct.

Mr. HUGHES. During the time that this proposal was prepared and these standards were being developed, was the Department of Treasury consulted at the various stages of the review process?

Mr. STEPHENS. I have to answer that with a certain degree of caution. I was not intimately involved in that process at that time in terms of the technical working out, but my understanding was this was essentially an NIJ testing kind of procedure to see what we could come up with. And as that procedure developed, there would have been some cross fertilization with Treasury, but I don't know the extent to which——

Mr. HUGHES. I don't think I am making myself clear.

What I am trying to find out is how we could go through an entire process that consumed 2 years. A lot of reviews at all levels of Justice, based upon standards developed by the National Bureau of Standards, and after 2 years work end up at a point that when it is over at OMB, apparently, if my understanding is correct, there is a determination at that point that the approach was unsound?

Mr. STEPHENS. I think that in order even to get to a proposal or a draft to submit for legislative comment and review, you have to do the tests. And just because you do a test and set up a procedure doesn't necessarily mean that it is going to be effective.

Mr. HUGHES. Who determined that it wouldn't work? Was it OMB? Was it Justice, or was it Treasury, or was it a combination of all three, or was it somebody else?

Mr. STEPHENS. Who determined which, sir?

Mr. HUGHES. The proposed test procedure and the proposed draft legislation developed by Justice, who determined that that would not work?

Mr. STEPHENS. It was a question of interested parties in the legislative and administrative process which would be Treasury, which certainly has a lead role in this area; the Department of Justice, which had expressed a particular interest because of protecting law enforcement; and in that process of trying to work out the effective approach to this.

Mr. HUGHES. No, it was a procedure to identify bullets using a test. As I recall, it was a test based upon whether or not ammunition of various types would penetrate a certain number of layers of aluminum.

Mr. STEPHENS. That is correct.

Mr. HUGHES. Am I correct?

Mr. STEPHENS. Yes.

Mr. HUGHES. And it worked, as I understand it. I remember talking with some of your technical people from Justice over the last 2 years because they sensed that we were interested in trying to move some legislation if we could fashion a bill that made sense.

I remember discussions at the White House when we went down to discuss one of my favorite subjects, Justice assistance, and child pornography, and forfeiture, and on and on. I remember very vividly a discussion with Lowell Jensen about armor-piercing ammunition, and he was very optimistic at that point—that was 3 or 4 months ago—that you were very close, and as I recall, it was on this proposal. You were close to reaching some type of agreement; it was apparently a difference with Treasury over it.

Now you are suggesting to me that the final determination was that the original test really would not provide a workable formula for identifying so we could ban what was in effect armor-piercing ammunition which had very little, if any, sporting purpose.

Is that what you are suggesting?

Mr. STEPHENS. I am suggesting, as the chairman has pointed out, 2 or 3 months ago, we were optimistic that we could come to some resolution of this problem. At that point in time, one of the proposals on the table for resolving this problem was the NIJ test. That was not the only proposal to be considered—the question is could you have some kind of intent? Could you have some kind of composition? Could you have some kind of other approach to this which wouldn't be as difficult to enforce in a court of law, or to enforce by licensing and regulation, or for ATF to approach? Sure, this is one proposal by the Department of Justice. We are not wedded to that as the only possible solution. And, in fact, when we got into this and analyzed some of the enforcement problems, and with the benefit of Treasury's enforcement insight of this, the conclusion was reached that the proposal before the subcommittee today really is a cleaner, simpler approach—you don't have as many technical variables; the process is not as expensive for testing; it is not as complicated. And if you are trying to introduce evidence, it is probably a preferable approach. Either one might work; or the other one might work. This one, I think, will certainly work, and probably work better.

Mr. HUGHES. Let me ask you a question, then. S. 1762, obviously is supported by the administration?

Mr. STEPHENS. Yes.

Mr. HUGHES. That uses this same test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistic Resistance of Body Armor, as the test for determining what in effect is armor-piercing ammunition.

Now my question is: If, in fact, the test is efficient and effective for the purpose of S. 1762, why wasn't it efficient and effective for the purpose of your draft?

Mr. STEPHENS. Two things. First of all, as you well know, S. 1762 was developed almost 2 years ago. The legislation on mandatory penalties for armor-piercing ammunition was designed to try to meet the problem as best we could at that point while we continued, as I pointed out in my testimony, to work to resolve the definitional problem.

Mr. HUGHES. So, are you saying that the administration no longer supports that test in the context of S. 1762?

Mr. STEPHENS. There are two approaches to that, Mr. Chairman. One is, yes, that is an operable kind of approach. The other is that perhaps——

Mr. HUGHES. I am trying to find out what the position of the administration is. Do you support that test in the context of S. 1762 or not?

Mr. STEPHENS. That is the legislation as it stands before Congress and that is what is supported. It may mean that it is appropriate to amend that legislation to incorporate this test so that both bills have symmetry. I am saying that if consideration is given to that, that might be a preferable way of approaching it so that we don't have two tests out there for the same problem.

Mr. HUGHES. I don't understand. If, in fact, you have some problems with the testing procedure that was developed by the National Bureau of Standards and that was the basis for in fact rejecting the proposed draft—the Justice approach to dealing with armor-piercing ammunition, then why don't the same flaws exist in the context of S. 1762?

Mr. STEPHENS. I am suggesting it may be appropriate that that be amended so we have symmetry in our definition.

Mr. HUGHES. That is what I am trying to find out.

Mr. STEPHENS. Pardon?

Mr. HUGHES. That is what I am trying to find out—is it symmetry or is it because the test is not going to work.

Mr. STEPHENS. I think symmetry, certainly, so you don't have the two criminal statutes out there approaching the same problem with different definitions.

Mr. HUGHES. What we could do is, we could use the definition in S. 1762 and move that as our armor-piercing bill out of this committee and that would provide the symmetry you are looking for.

Mr. STEPHENS. That is one approach. Treasury may wish to amplify their concerns about the enforceability and the enforcement problems that their offices have expressed with respect to that.

Mr. HUGHES. Would you support that approach?

Mr. STEPHENS. I think it is far preferable to do it the other way around. We have what we believe is a workable definition.

Mr. HUGHES. There was a time when you didn't believe that.

Mr. STEPHENS. I have never testified, Mr. Chairman, that we didn't believe——

Mr. HUGHES. I know, but Justice felt that their approach was far preferable to use this standard.

Mr. STEPHENS. We certainly, as we developed through this process, had a process and a proposal which we supported in a trial run. It is a learning process—as you get input of other views and perspectives, you may find that there is a modification which is more effective. I am sure there are a lot of bills proposed here that are modified in many ways through committee consultation process. And just because they are modified doesn't mean the first one was completely ridiculous or ineffective. It means that it may have had some basis for——

Mr. HUGHES. On the contrary, I thought that the approach that you were developing was an excellent approach. I mean, you folks convinced me that you were making tremendous strides. And I felt that the work that you had performed was the best I had seen in trying to deal with a very difficult problem.

You did such a good job, you persuaded me that it made abundant good sense. And I believe that your approach, if I understand the standard correctly, would truly reach more armor-piercing ammunition than with the approach that you now support—ammunition that has very little sporting value. And if I understand correctly, what we are doing is in essence, and we will ask Treasury about this, the legislation you are now supporting will only ban essentially the ammunition that the manufacturers have already agreed not to market through retailers.

Mr. STEPHENS. Mr. Chairman, if I might just briefly respond to that: First of all, your characterization of it as our proposal and the one we were—really it was a proposal, yes; but the administration's proposal is the one before the committee today.

Second, as you point out, whether this bans effectively that ammunition which is banned voluntarily, you may or may not remember——

Mr. HUGHES. Let's find out from Treasury. What can you tell us about that? I interpret the term "armor-piercing ammunition" and the manner in which it is defined as projectiles which have projectile cores constructed of certain types of solid metal. It is my belief that we really have not covered more ammunition than the manufacturers have already voluntarily agreed not to market for private consumption.

Now, I know that, Mr. Walker, in your statement in chief you do allude to that and concede that to be the case. Is my assumption correct?

Mr. WALKER. We have covered the ammunition that was designed to be armor-piercing.

Mr. HUGHES. It is a special type of ammunition.

Mr. WALKER. That is right. And this is ammunition that was designed to be armor-piercing. The principal manufacturers of which were well known to us and we contacted as soon as this problem came to our attention, and we got voluntary agreements out of them. They are voluntary agreements, they are not mandated agreements.

Mr. HUGHES. I think that that was a good initiative, and I think the Department is to be complimented for doing that.

Mr. WALKER. The fact that, you know, a different definition might reach out beyond those manufacturers doesn't necessarily make it better because it also might reach out and ban the manufacture or importation of legitimate sporting rounds.

Mr. HUGHES. That wasn't my question, though, I think you know that.

My question was: I am of the opinion—and I am not the expert, you have got the expert with you there, and Mr. Owen can certainly testify—but I am of the opinion that basically the definition describes the special ammunition essentially that the manufacturers have already agreed not to market for private consumption.

Am I correct?

Mr. WALKER. To date, the manufacturers and importers are agreeing voluntarily to restrain this; yes, that is true.

Mr. HUGHES. I know, that wasn't my question.

My question was—maybe I am not making myself clear. Let me try it again.

What I am trying to find out is does this definition cover any more basically than what the manufacturers have already agreed to stop providing for private consumption? And, if so, what is not covered?

Mr. WALKER. Any military surplus armor-piercing ammunition manufactured abroad could not be imported, and anybody could do that, and such potential importers or importers would not be covered by any voluntary agreements in existence today.

Mr. HUGHES. Do you know of any importers presently that are bringing in foreign special ammunition that fits this category?

Mr. WALKER. I don't personally but perhaps Mr. Owen does.

Mr. HUGHES. Because I am not aware of any.

Mr. WALKER. Military surplus armor-piercing ammunition abroad, I am told there is quite a bit of it out there, and that it could be imported very easily.

Mr. HUGHES. There is a lot of surplus ammunition out there.

Mr. WALKER. I might say that these voluntary agreements are not enforceable agreements in a court of law. These are just simple agreements by manufacturers who have recognized the problem and have been pretty, I think, admirable in agreeing to abide by what we hope they would continue to do. But we have no definite assurances.

Mr. HUGHES. They are complying voluntarily. You don't know of any manufacturers, do you, that have decided to renege on that voluntary agreement?

Mr. WALKER. No; but I don't think that the committee is suggesting that we just rest with the voluntary agreement. I mean, the important thing is to try and get some legislation that deals with the problem.

Mr. HUGHES. The fact of the matter is the manufacturers have voluntarily complied, have they not?

Mr. WALKER. Yes; they have, and that has dealt with the problem on a very ad hoc, temporary, intermediate basis. We would like to have permanent legislation to deal with this problem permanently, and we think the police officers of this country deserve that.

Mr. HUGHES. Mr. Walker, you previously testified that pending a ban on manufacture, you had taken steps that protect the law enforcement officers through an enactment of mandatory minimum penalties based upon a penetration standard. Does your new approach offer equal protection to law enforcement officers?

Mr. WALKER. We think it does; yes.

Mr. HUGHES. This special ammunition, the so-called ammunition that the manufacturers have already voluntarily agreed that they would not manufacture and provide for private use, how much of the total armor-piercing ammunition that is out there does that represent?

Mr. WALKER. Nobody has any accurate records of that.

Mr. HUGHES. Can you give me an approximation?

Mr. WALKER. I can't, and I know ATF cannot.

Mr. HUGHES. Can I give you my own perception?

Mr. WALKER. Fine.

Mr. HUGHES. I am not an expert.

Mr. WALKER. Sure.

Mr. HUGHES. But it is less than 1 percent.

Mr. Owen, could you quarrel with that?

Mr. OWEN. The specifically designed armor-piercing ammunition makes up a very small amount of the total world of ammunition that is produced.

Mr. HUGHES. Could you quarrel with less than 1 percent?

Mr. OWEN. No, sir.

Mr. HUGHES. So, what we are saying in essence is that we are advancing a proposal to ban ammunition that the manufacturers have already agreed to ban, that represents less than 1 percent of what could be characterized as armor-piercing ammunition? That 99 percent of the armor-piercing ammunition we are not going to touch with that proposal?

Mr. WALKER. As I said, we don't have information. It could be as much as 10 percent, we just don't know.

Mr. HUGHES. I don't believe that.

Mr. WALKER. I think one thing that we have established is we have no expert testimony on that issue right here.

Mr. HUGHES. No; we have one of the experts with us today, Mr. Owen is certainly an expert in this area.

Mr. WALKER. Who has no information on it. I mean, we don't know what the amount is. But the point is that whether the practical effect is that we are banning additional ammunition or not is one feature of the bill. The other feature of the bill is that the law enforcement officer who puts on his vest will have a greater assurance that he will not be facing this armor-piercing ammunition and if this law does not pass.

Mr. HUGHES. I think that you made the point, or at least somebody from Justice has made the point, as have other witnesses that testified before this subcommittee, that police officers, with or without this legislation, should not work on the assumption that it is safe.

My concern is that we are going to be overpromising and underdelivering with this legislation. I have a concern why all of a sudden there is so much momentum behind a bill that is being portrayed as the protector of the law enforcement community when in fact if we examined it carefully, and that is what we are trying to do today, we find that the ammunition we are talking about is already not available from manufacturers because manufacturers had already agreed that they will not provide this for retail private consumption.

Second of all, it represents a very small portion, whether it is 1 or 10 percent, it is a small portion of what is legitimate armor-piercing ammunition. It seemed to me that the big concern that I would have is that we are portraying this as the protector of the law enforcement community when, in fact, that is not the case.

I would hate to have anybody rely upon this proposal as a safeguard. It certainly would be important that if the manufacturers did a reversal on us and decided that they would not honor the commitment. And, frankly, I talked with a law enforcement officer on Monday, I think it was—I had to speak to the National Law Enforcement Council over at the Capitol Hill Club, and in the audience were a number of law enforcement officials. And one of them—and I won't volunteer the name—came over to me after I spoke to them, and said, you know, it is interesting, after this new draft was advanced, my organization tried to get some ammunition and that we found that we couldn't get the ammunition, but then we put word out on the street that we wanted some of this ammunition, we got plenty of it at that point. But we couldn't get it from the retailers.

Now, I don't know whether that is true or not, but this individual is a very reputable Federal official.

Mr. WALKER. Of course, this bill would go quite a ways to preventing that practice.

Mr. HUGHES. No, it won't. Let me just tell you why it won't: You have excluded possession, use, and sales. Now, what you have done, in essence, is ban the manufacture when they are not manufacturing, but you haven't dealt with sale, or use, or possession.

Mr. WALKER. I would like to address that. May I address that?

Mr. HUGHES. I wish you would.

Mr. WALKER. The problem with sale or possession is that in effect the rounds that may be out now that have left the manufacturer and are in the hands of either the dealers or users who might have it, while relatively small in number, we think in these rounds, would pose an intolerable burden on those individuals, on the dealer and on the individual, because they would then be faced with, first of all, having acquired the ammunition legally, and all of a sudden, by an act over which they had no control personally and no criminal intent being somehow——

Mr. **Hughes**. Why don't we buy it up? Why don't we purchase it?

Mr. **Walker**. If I could finish, I will address that one, that question, if I could.

They would be faced with it being a criminal offense, possible criminal offense. And in any event, if they had to decide whether or not they could continue to possess it, they would have to engage in expensive, time-consuming, and very complex tests, the cost of which would far outweigh the danger.

It is a possibility, it is a possibility to consider somehow asking them to turn it in.

Mr. **Hughes**. Don't we know which manufacturers manufactured this? Isn't it under a specific trade name?

Mr. **Walker**. We generally do, yes.

Mr. **Hughes**. Yes. Can't we just identify those shops that have that information and ask them to surrender it and pay for it?

Mr. **Walker**. One of the points that was made earlier in the testimony by Congressman——

Mr. **Hughes**. Why don't you just answer that question? I realize you have got your own——

Mr. **Walker**. OK, fine. We would have to find the money, and we would have to see about that—that could be done.

Mr. **Hughes**. It seems to me that there is a higher risk to the police officers from that ammunition being diverted into illicit channels than a risk that of the manufacturers who have already agreed voluntarily not to manufacture it will resume manufacture, which is all that the administration bill is reaching.

Isn't that a higher risk to the police officers in the street?

Mr. **Walker**. We think that the continued manufacture and importation would be a substantial risk——

Mr. **Hughes**. It is.

Mr. **Walker** [continuing]. And that is what we intend to do.

Mr. **Hughes**. It is, John, but they have already agreed they are not going to manufacture. Now, you know they are not going to renege on that, they know it wouldn't take much effort on our part to pass legislation to deal with that if they decided to renege on it.

My point is—I think you know my point.

Mr. **Walker**. I think your point is a good one, and I think it is something that we will certainly take into account. I have been discussing just today the possibility of immediately sending out an advisory to all licensees to express as soon as this bill passes, express the intent of the bill, and the spirit of it, and urge them to contact us and to not continue——

Mr. **Hughes**. Would you support a provision that would provide some money to buy this ammunition?

Mr. **Walker**. I don't know right now what the dimensions of that would be. We could discuss that with you. It may be that there is so little that it wouldn't require any separate money apart from what is already in the budget, or we may even be able to get a voluntary turning in of this ammunition.

Mr. **Hughes**. Why would you have to put this ammunition through a test? It is all trade name. I mean, we know the manufacturers that made this special ammunition. Why would we have to require retailers to put it through a test, some complicated test, which, obviously, you are going to have to put it through. And if, in fact, this bill were to pass, you would have to use the same test to be able to, first of all, invoke the enhancement provisions that are contained in the bill to determine that it really is armor piercing, under your definition, wouldn't you? If it is so complicated and so time consuming, apparently we are prepared as a governmental entity to deal with that—in order to establish that it is truly armor piercing, we would have to put it through that kind of a test.

Mr. WALKER. Right. But I don't think at this point we want to be in a position of imposing on dealers and users the obligation of putting it through a test.

Mr. HUGHES. No, it is not imposing. We are trying to save lives, aren't we? Isn't that what we are trying to do?

Mr. WALKER. That is right.

Mr. HUGHES. Isn't the risk to the police officer from the diversion of this ammunition that is already out there? Isn't that the risk?

Mr. WALKER. We are talking about a very small amount of ammunition right now.

Mr. HUGHES. But it is the only ammunition that is available out there, because the manufacturers are only selling to the military and to the law enforcement agencies.

Mr. WALKER. I think that if we have been able to obtain voluntary agreements from the manufacturers, we can start working on the 200,000 dealers who are out there, one small percentage of which we don't know who they are, might have some of this ammunition.

I think the first approach we would take administratively is to contact the dealers through our regular notification procedure at ATF and advise them that we are very interested in the ammunition that they have that would fit within the definition of the law that Congress has passed, and then seek to control this administratively.

I don't think, however, that because we are dealing with the present situation here and the present context but the legislation would have implications for the future, that we should be in the position of banning any sale or possession in the future of ammunition that might come up in the future when we can deal with it by dealing with the manufacture and importation.

Mr. HUGHES. It is my understanding that there was quite a bit of opposition from some of the sportsmen's group to any efforts to ban sale.

Mr. WALKER. And possession.

Mr. HUGHES. And possession. Am I correct in that?

Mr. WALKER. I think that is true.

Mr. HUGHES. I have information—and maybe it is incorrect—that you folks didn't agree with that. But finally as a matter to try to compromise it out, you finally agreed to exclude possession and sale. Is that correct?

Mr. WALKER. I think that you have to obviously look at legislation carefully; you have to take into account the interest of all of the various parties; you have to see how a piece of legislation is going to be workable.

Mr. HUGHES. You know, you could give me a yes or no on that.

Mr. WALKER. And I think that in this particular instance, the difficulties of testing, as far as dealers were concerned, was persuasive.

Mr. HUGHES. So the answer is yes, I presume?

Mr. WALKER. The answer is that we did not feel sale was required.

Mr. HUGHES. Yes.

I indicated during Mr. Biaggi's testimony that it was my belief that under your definition of armor-piercing ammunition that if the projectile core had any other metallic substance other than those enumerated that it wouldn't trigger a violation of your proposal. Am I correct in that?

Mr. WALKER. That is correct, unless it is a trace element.

Mr. HUGHES. Yes. And I also indicated that I had some questions as to whether the KTW, which really got more attention than probably it deserved when this issue first surfaced, it would be my belief that one could argue that the KTW would not be covered by your definition.

Mr. WALKER. No, that is not true, because the KTW has a solid projectile core and, indeed, is a solid projectile. The jacket is of a different substance, but the jacket is irrelevant to the definition. And the teflon is——

Mr. HUGHES. Where does it say that?

Mr. WALKER. The definition does not deal with jacket.

Mr. HUGHES. I know, but where does it say that in the bill? I see what you are saying but I am just trying to point up something that would occur to me. If you had sat down with me, for instance, when this was being drafted, one of the issues I would have raised would be that issue because—you were a distinguished prosecutor for a number of years, and I trust before that you were a defense attorney. But I could make a lot of hay with that argument, given the fact that there is nothing in your definition that would suggest that that would not be the case.

Mr. WALKER. The definition uses the term solid projectiles or projectile cores in the disjunctive.

Mr. HUGHES. Solid projectile. Projectile is this right here [indicating].

Mr. WALKER. All right, that is your argument. Then in that case we are dealing with projectile core.

Mr. HUGHES. It says projectile or projectile cores, doesn't it?

Mr. WALKER. Right, or projectile cores.

Mr. HUGHES. Projectile or projectile core. And you are saying——

Mr. WALKER. If you want to make the argument that this is not a solid projectile because it has teflon coating, then we fall back on projectile core, and we have a solid projectile core so that it would be banned.

Mr. HUGHES. You don't think a defense attorney would argue that this is not covered?

Mr. WALKER. I think a defense attorney——

Mr. HUGHES. They argue anything.

Mr. WALKER [continuing]. Anything they want.

Mr. HUGHES. Yes, but when we are on notice that that could be an argument, why not try to close that without inviting that type of argument?

Mr. WALKER. The jacket is a separate entity. And there are soft core rounds of lead which might have hard jackets which are used for sporting purposes by legitimate gun owners and are sold by gun dealers for legitimate supporting purposes that we definitely would not want to cover, and were not rounds that were ever designed by the manufacturer to be armor-piercing. So that you open up a whole Pandora's box of problems if you start dealing with jackets.

I would like Mr. Owen to discuss this, though, if I could.

Mr. HUGHES. Before he does, let me just—KTW, you know, maybe doesn't point it up as well as this Swedish ammunition does. The Swedish ammunition has a copper liner, a significant copper liner. That is this ammunition here.

[Ammunition shown.]

Mr. HUGHES. That is a jacket. This jacket here is copper. The inner core is lead.

Mr. WALKER. Right.

Mr. HUGHES. But the liner is a very substantial amount of copper——

Mr. WALKER. Right.

Mr. HUGHES [continuing]. And steel. Now, would you say that would be covered by your definition?

Mr. WALKER. Would not be covered by the definition, it would be permitted to be manufactured and imported. It was not designed to be armor-piercing.

Mr. HUGHES. But this would pierce, this is armor-piercing ammunition.

Mr. WALKER. No, that is where I think we would differ. This was not designed to be armor-piercing and I don't believe it has the same armor-piercing capabilities, depending upon what your definition of armor is, as the KTW. But I would like Mr. Owen to address that one.

Mr. OWEN. The specifically designed armor-piercing ammunition characteristically has a very solid projectile or a very hard projectile core. The majority of the conventional ammunition is composed of a softer core material which is usually lead, and a jacketing material. The problem we have in trying to cover certain types of jacketing materials is that virtually all large caliber sporting ammunition contains a very similar style jacket. It was almost impossible to come up with a definition where we could control a jacket of a given thickness, while at the same time not forcing ourselves to ban almost all of these center file rifles sporting ammunition that is available in the country.

Mr. HUGHES. If I were a smart guy who wanted to provide armor-piercing ammunition for a market out there, couldn't I just manufacture a copper and, let's say, tungsten core, or copper core?

Mr. OWEN. If you have a tungsten core, it would be covered under the proposed definition?

Mr. HUGHES. What about copper and manganese?

Mr. OWEN. Copper and manganese would not be addressed.

Mr. HUGHES. How about copper and nickel?

Mr. OWEN. It would not be addressed.

Mr. HUGHES. How about copper and a small amount of lead in the core?

Mr. OWEN. If it were alloyed to the point where it was no longer copper, it would not be addressed. This definition was written with the idea of most any alloyed material does contain many trace elements.

Mr. HUGHES. I don't have to tell you, though, I mean, if you are interested in attempting to provide ammunition which is armor-piercing for a market, it would be very easy to circumvent this, wouldn't it?

Mr. OWEN. Yes, sir, it would be very easy to circumvent most anything we would write.

Mr. HUGHES. No, not if you noted so that we use the test procedure that Justice used.

Mr. WALKER. We had a problem with that test procedure and I noted your questions to Mr. Stephens. You know, that was a good-faith effort by all parties to try and come up with a definition that was workable. But when it came through Treasury for clearance and was referred to ATF, that is where it had started having really tough sledding because Mr. Owen, who is the Director of the Firearms Technology Branch, and is the leading expert, really, in the Government on this subject, found that there were too many variances or variables involved in that procedure to make it really workable from a regulatory and enforcement perspective.

So that that definition ran into lots of problems. It would have prohibited ammunition that was never designed to be armor-piercing and it might have allowed certain ammunition that was designed to be armor-piercing to be permitted.

Mr. HUGHES. How many ongoing cases are you aware of where defendants were arrested with this special ammunition on their person?

Mr. WALKER. There are very few, there are very few right now.

Mr. HUGHES. Do you know of any?

Mr. WALKER. Right now I can't say that I would know of any. I do know of some instances where this ammunition was used to actually kill police officers. There were two or three incidents in the statistics that we looked at in which this was used.

I think what we are dealing with here, Mr. Chairman, is as much a potential problem as a present problem. We are dealing with a problem of putting legislation in place which will deal with concerns that we may have today that have been expressed so ably by Congressman Biaggi today and by the police groups today. But also, we are dealing with a future problem as well, and that is that if we can stop the manufacture and importation now, then we don't have to worry about the large amounts that might eventually come out into the hands of the public.

Mr. HUGHES. It seems to me that the problem doesn't exist from the manufacture of this special ammunition because they voluntarily agreed not to manufacture that. The risk, as I see it, comes from that ammunition that is already out in the marketplace, first; and the risk comes from those manufacturers that, if they were intent upon making special ammo, could do so by easily circumventing your definition.

I mean, you wouldn't have to be a technical expert to circumvent this. I think that my 17-year-old son could do a good job of devising ammunition under this definition that would circumvent your definition of armor-piercing. So the risk really is in areas that we are not beginning to address.

Now, on the other hand, if I asked Justice, and I will, how much ammunition do you think exists in ongoing cases that fit the category of armor-piercing under your criteria?

Mr. STEPHENS. Mr. Chairman, I think initially we would point out that the definition of armor-piercing ammo which is in the proposal that is before the subcommittee today has the same coverage as the Justice original draft would have had. Our test procedure would have drawn the line to ban importation of that same category that the definition——

Mr. HUGHES. You are telling me that the test procedures that you were developing under your proposal developed as a result of work done in conjunction with the National Bureau of Standards would reach the same ammunition as the draft that you are advancing today?

Mr. STEPHENS. That is correct. In fact, we were drawing the line at seven plates of aluminum and, if anything, we might be reaching a little more under the composition definition than we would have had on the piercing of seven aluminum plates.

But to answer your specific question, I am not aware of a large number of cases out there.

Mr. HUGHES. Wasn't one the problems with the Justice proposal that there was some concern that you were reaching ammunition that went beyond just the ammunition that the manufacturers had already agreed voluntarily to restrict?

Mr. STEPHENS. I think, as Mr. Walker pointed out, when the proposal underwent technical scrutiny at Treasury, they had some concerns, and they may wish to address those to advise you.

Mr. HUGHES. That wasn't my question. My question was isn't it a fact that one of the objections to the Justice proposal was that it reached more ammunition than does the voluntary agreement by the manufacturers?

Mr. STEPHENS. I don't think that was the case. The concern is where do you draw the line, is it seven plates or six plates? And the problem is, is there one type of ammo which would actually pierce six plates but really does possess armor-piercing capabilities? But if you draw the line at seven plates, you don't actually cut it off. So, it might have actually been more restrictive.

Mr. HUGHES. What are we going to do when some manufacturer begins to manufacture other special ammunition that has a different alloy than the ones you have enumerated in here? What are we going to do then?

Mr. STEPHENS. We can always amend the legislation if indeed—that occurs what this legislation does address are those bullets on the market.

Mr. HUGHES. Isn't that more of a risk today than that these manufacturers that have agreed to voluntary cease manufacturing this special ammunition will change their mind? Isn't that more of a risk?

Mr. **Stephens**. I don't necessarily perceive that as a substantial risk that manufacturers——

Mr. **Hughes**. Well, you and I disagree on that then, because I don't know how in the world anybody can believe that these manufacturers that have agreed in good faith to cease manufacturing this special ammunition are going to change their mind, No. 1.

And, No. 2, I don't see how you can suggest that if there is a market for special ammunition that some smart manufacturer is just going to change the composition and you are going to be helpless to do anything about it.

And how you can suggest that that is not more of a risk, is beyond me.

Mr. **Walker**. It is just as much of a risk, Mr. Chairman, for one of the manufacturers who has voluntarily restrained to stop his restraint and to stop manufacturing again, or, for a new manufacturer to start manufacturing rounds that are proscribed or would be prohibited under this bill, because these are the principal materials that would be used today in the state of the art of manufacturing bullets that are intended to be armor-piercing.

Now, it could well be that a new alloy composition might be devised in the future to be intended to be armor-piercing. And in that case we would have to come back to Congress, and we would come back to Congress, to seek an amendment to the statute to accomplish the proscription of that.

Mr. **Hughes**. I am not going to belabor the point. These manufacturers are all acting in good faith. Do you see any sign that they are going to change their mind?

Mr. **Walker**. Of course, today I do not, I haven't seen any sign. But nobody can have any guarantees——

Mr. **Hughes**. You assured us months ago when this bill was moving and there was some effort to do something about it, you assured us that everything was under control—there was no special ammunition and——

Mr. **Walker**. And still is under control.

Mr. **Hughes**. Yes. There was no manufacturer out there——

Mr. **Walker**. No.

Mr. **Hughes** [continuing]. That really presented a direct threat to the law enforcement community. Isn't that what you said? You assured this committee when we said, you know, time is of the essence, we ought to be moving expeditiously. You came in and testified—not you personally, I am talking about the Department of Treasury—came in and said, look, we have got everything under control; there is no such risk because we have voluntary agreements.

Mr. **Walker**. Yes, and I think this committee insisted that we go back and work on the problem, and continue the problem—and Mr. Biaggi can, was after that——

Mr. **Hughes**. And what are you bringing us? You are bringing us a proposal which in effect confirms voluntary agreements already negotiated.

Mr. **Stephens**. Mr. Hughes, if I might just point out—when we testified on this in the Senate, Mr. Powis was testifying and Senator Biden questioned him very closely on that point. Senator Biden said, "I will be satisfied, Mr. Powis, if you go back and write into a statute the equivalent of the voluntary agreements that you have that bans ammunition."

I think that has been accomplished in this definition, to the satisfaction, at least, of those individuals on the Senate side.

Mr. HUGHES. Well, the Senate does their thing and we do our thing over here, you know, that is how it works. We have two bodies.

I am interested in doing something substantial. I want to do something substantive to protect the lives of the law enforcement community. And I think it is important that we get on the table exactly what we are doing so that everybody knows what we are doing.

Now, Mr. Walker, in your statement, which I want to tell you, I took some offense to, you say on page 7:

> I urge the committee to report favorably on H.R. 5845 in its present form so that we can, without further delay, provide statutory protection for police officers—

You know——

Mr. WALKER. Against the potential danger of armor-piercing ammunition.

Mr. HUGHES [continuing]. "Against the potential danger of armor-piercing ammunition."

I wonder at this point, why, in its present form, No. 1, I mean you would suggest that you don't want us to do anything to the bill. You suggest it has to be H.R. 5845. I mean, you don't want to change either the sponsor of that; you don't want to change any words in that; and without further delay. I wonder what happened between the last time that your agency was in to testify before us and today, which provides this urgency, when in fact the manufacturers have already agreed not to manufacture this stuff. And we are not beginning to deal with the risk that is out there; that is, that there is ammunition in the marketplace today that we are not going to touch with this legislation.

Mr. WALKER. Well, this is your view, and it is your view——

Mr. HUGHES. Of course it is.

Mr. WALKER [continuing]. And I respect hearing your view, I don't believe it is shared by the six police organizations that have supported this bill, and they are not against this proposal. The other groups that we have talked to who support this bill also indicate their favorable support—and that is that we are talking about both sides of the gun issue, if you will. We have achieved 84 cosponsors in the Senate. We have achieved 160 cosponsors in the House.

Mr. HUGHES. Mr. Biaggi has over 120.

Mr. WALKER. But Mr. Biaggi's bill, of course—I hope those 120, by the way, are in addition to our 160, because that would give us a majority right there, because the bills are identical. Mr. Biaggi introduced the Administration's bill. So I think that is why we can—from a practical viewpoint, if the bill is not amended, we believe we can get the bill through now, in this session, in both houses, and it can be signed into law, and provide the protection that it does provide.

It may not go as far as other bills in the future. It may not accomplish everything that you, Mr. Chairman, would like to see. But it is a practical, workable, solution to an immediate problem; and then if there is a future problem it can be addressed.

I think it is far better to have this bill signed into law this year than no bill. And I would respectfully suggest that if there are changes made, that the wide support that currently exists for H.R. 5845 and for Mr. Biaggi's bill would dissipate.

Mr. HUGHES. I don't believe that, that is nonsense.

Mr. WALKER. I guess the proof would be in the pudding.

Mr. HUGHES. I have yet to see a bill delivered, you know, by any administration—this administration or previous administrations—where people, working in good faith, trying to fashion the best possible bill, didn't gather support if it in fact accomplished the ends. And the law enforcement community is only interested in developing legislation that makes abundant good sense and protects their officers.

Let me just give you a minor example. Under your approach, then my committee could not even begin to deal with some of the problems I have already alluded to—the composition of the bullets. My committee couldn't begin to deal with the concerns that I have personally over the use of the word "solid."

What your bill really defines is not solid, but "constructed from." I mean, you can consult the English dictionary and the word "solid" means just that: all one type. You are talking about constructed from, not solid. I mean, minor, yes, but we are talking about——

Mr. WALKER. We defined the word "solid" in the definition.

Mr. HUGHES. The Fish bill had a major drafting problem dealing with sentence enhancement which, as you know, was corrected. If Mr. Brooks had not corrected that and you took the position that we should not really touch any aspect of the bill for fear of losing, you know, support——

Mr. WALKER. We are talking substance, though, Mr. Chairman. We are not obviously talking about rearranging commas——

Mr. HUGHES. Isn't that substance?

Mr. WALKER [continuing]. And any punctuation changes or paragraph numbering that the committee feels would be appropriate, would not be any kind of change as far as we are concerned. And, of course, this committee is free to do anything they want with this bill. It is just looking at the——

Mr. HUGHES. I appreciate that.

Mr. WALKER. You know, obviously. But I would hope that the practical passage of the bill would be kept in mind.

Mr. HUGHES. How many times have you been before this committee?

Mr. WALKER. Quite a number.

Mr. HUGHES. I think you know by this time that this committee basically operates on the basis—in a bipartisan fashion—on the basis of what we think is best.

Mr. WALKER. Sure.

Mr. HUGHES. We fashion legislation that we think is going to serve the public good. We listen to everybody. Unfortunately, that is not the case as I see with Treasury these days, because they don't want to hear from those of us interested parties on the legislative side until after they fashioned a bill which they say is the missile you have got to go with.

Mr. **Walker**. Mr. Chairman, it is normal practice, is it not, to report a bill up and have it referred to a committee and then have hearings of this sort?

Mr. **Hughes**. Yes; but it is also normal practice when an agency knows that a committee has a very decided interest in legislation to try to work with the committee. I have a staff that does an outstanding job, and we have expressed our interest to your agency on this issue. I thought we were working together on it but I find that it was a solo.

Mr. **Walker**. I think we are still working together.

Mr. **Hughes**. You weren't interested in working with the legislative partner to any process. You have developed a bill which you now tell us we have to swallow hook, line and sinker, no exceptions.

Let me just tell you that that is not the way it works around here, that is not the way it works in this subcommittee.

Mr. **Walker**. Right.

Mr. **Hughes**. I just find the whole manner in which you have dealt with this issue to be absolutely, you know, reprehensible.

Mr. **Walker**. Mr. Chairman, for not working for the legislature, it is kind of remarkable that we have ended up with 160 cosponsors in the House and 84 cosponsors in the Senate.

Mr. **Hughes**. That is a lot of sex appeal, what can I tell you?

Justice Assistance passed the Congress by 399 to 16, overwhelming bipartisan sentiment for that particular crime bill. But that is laying over in the Senate at the present time. That has a broad bipartisan support; and this has a lot of bipartisan support because people basically want to do what they can to protect police officers.

I am not sure you have delivered a package to us that is going to do that, though.

I think we have explored the areas that I am particularly interested in. I still want to work with Justice and the Treasury Department in trying to fashion legislation that makes good sense. I am anxious to hear from the law enforcement community because they have an important role to play in fashioning any legislation.

But I can tell you that I am not about to be stampeded into reporting out legislation that I don't think is in the public interest, that is not going to serve the public interest, and is not going to do something substantive to protect the law enforcement community.

Thank you very much for your testimony.

Mr. **Stephens**. Thank you very much, Mr. Chairman.

Mr. **Walker**. Thank you, Mr. Chairman, and I can assure you that we would welcome the opportunity to continue to work with this committee.

Mr. **Hughes**. I want to apologize to the second panel for being so late in reaching the second panel, and the third panel. I even going to be more apologetic when I tell you that I am going to have to recess because I am on the Bankruptcy Conference and there is a meeting that started 15 minutes ago to deal with the bankruptcy issue. So I am going to have to adjourn this hearing until 1:30 at this point.

The hearing stands adjourned.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:30 p.m., the same day.]

Mr. HUGHES. The Subcommittee on Crime will come to order.

Our next witnesses are also made up of a panel: Samuel Kramer, Deputy Director, National Engineering Laboratory, National Bureau of Standards, and George Kass, owner, Forensic Ammunition Service, Spring Arbor, MI.

Gentlemen, we welcome you to the Subcommittee on Crime today. Your biographical information and prepared statements will be made a part of the hearing record, and you may proceed as you see fit. Welcome. Why don't we start with you first, Mr. Kramer?

TESTIMONY OF SAMUEL KRAMER, DEPUTY DIRECTOR, NATIONAL ENGINEERING LABORATORY, NATIONAL BUREAU OF STANDARDS, ACCOMPANIED BY DANIEL FRANK, LAW ENFORCEMENT STANDARDS LABORATORY, NBS, AND JAMES G. EARLY, METALLURGIST SPECIALIST, METALLURGY DIVISION, CENTER FOR MATERIALS SCIENCE, NBS; AND GEORGE KASS, OWNER, FORENSIC AMMUNITION SERVICE, SPRING ARBOR, MI

Mr. KRAMER. Mr. Chairman, with your permission, since my prepared statement will be made part of the record, I will abbreviate my remarks and leave most of the time for questions and answers.

Mr. HUGHES. Thank you.

Mr. KRAMER. Mr. Chairman, I am Samuel Kramer, Deputy Director of the National Engineering Laboratory at the National Bureau of Standards. I am accompanied today by Dr. Dan Frank of our Law Enforcement Standards Laboratory, who is next to me; and Dr. James G. Early, a metallurgist specialist from our Metallurgy Division, Center for Materials Science.

NBS has provided technical support to the National Institute of Justice since 1971. The support program is funded by the National Institute of Justice and is carried out by our Law Enforcement Standards Laboratory.

The program focuses on the application of science and engineering to the problems of criminal justice and encompasses a variety of subjects, including weapons, communications systems, and protective equipment for use by the police community, such as the body armor.

In fact, the first standard that the National Bureau of Standards developed for the National Institute of Justice was published in 1972 and that standard was for the "Ballistic Resistance of Police Body Armor."

The NBS research relative to body armor centered on the establishment of ballistic threat level classifications and reliable test methods to evaluate the level of protection that a product provides when impacted with a projectile from a firearm. As such, the primary concern was that the body armor resist penetration from a given ballistic threat and also prevent injury as a consequence of blunt trauma.

Since it will be pertinent to what I will be saying later, I want to note that the test method that was developed was a performance test method, it was not a prescriptive method.

The NBS conducted this research in conjunction with other government agencies, the private sector, and the law enforcement community, including the International Association of Chiefs of Police, the U.S. Army Laboratories at Edgewood Arsenal, Aberdeen Proving Grounds, and Natick, MA.

Subsequent to developing the standard for body armor, the National Institute of Justice requested that the NBS develop a test method for identifying armor-piercing ammunition. The test method that was developed is described in NBS publication NBSIR 84-2884, entitled "Test Procedure for Armor-Piercing Handgun Ammunition."

Mr. Chairman, with your permission, I would like to offer a copy of that report for the record.

Mr. HUGHES. Without objection, so received.

[The report follows:]

NBSIR 84-2884

TEST PROCEDURE FOR ARMOR-PIERCING HANDGUN AMMUNITION

Prepared by the
U.S. DEPARTMENT OF COMMERCE
National Bureau of Standards
Law Enforcement Standards Laboratory
National Engineering Laboratory
Washington, DC 20234

May 1984

Submitted to the
National Institute of Justice
U.S. Department of Justice
Washington, DC 20531

U.S. DEPARTMENT OF COMMERCE, Malcolm Baldrige, ***Secretary***
NATIONAL BUREAU OF STANDARDS, Ernest Ambler, ***Director***

ACKNOWLEDGMENTS

This report was prepared by the Law Enforcement Standards Laboratory (LESL) of the National Bureau of Standards under the direction of Daniel E. Frank, Protective Equipment Program Manager, and Lawrence K. Eliason, Chief of LESL. Preliminary test method development was accomplished by Mr. Russell N. Prather, Chemical Systems Laboratory, Aberdeen Proving Grounds, U.S. Army. This work was sponsored by the National Institute of Justice, Lester D. Shubin, Standards Program Manager.

FOREWORD

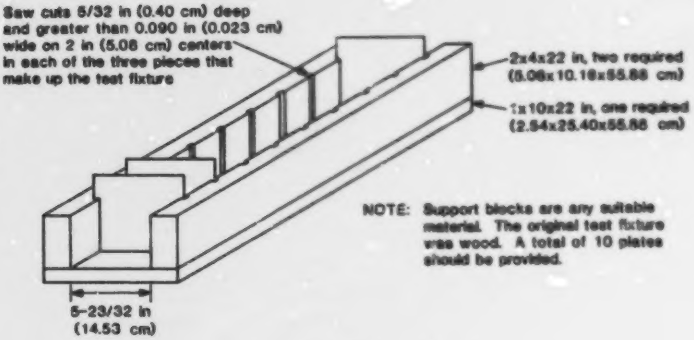
The Law Enforcement Standards Laboratory (LESL) of the National Bureau of Standards (NBS) furnishes technical support to the National Institute of Justice (NIJ), formerly the National Institute of Law Enforcement and Criminal Justice. The primary objective of the LESL program is to conduct research that will assist law enforcement and criminal justice agencies in the selection and procurement of quality equipment.

LESL: (1) Conducts research to develop test methods that can be used to evaluate the variety of equipment used by the entire criminal justice system, (2) subjects existing equipment to laboratory tests for the purpose of establishing performance criteria, and (3) conducts research leading to the development of several series of documents, including national voluntary equipment standards, user guides, and technical reports.

This document is a law enforcement technology report developed by LESL as part of the NIJ Technology Assessment Program. The test method described in this report is the result of research conducted in response to the NIJ request to devise a method whereby handgun ammunition could be evaluated to determine whether it should be classified as armor-piercing ammunition. Additional reports as well as other documents are being issued under the LESL program in the areas of protective equipment, communications equipment, security systems, weapons, emergency equipment, investigative aids, vehicles, and clothing.

Technical comments and suggestions concerning this report are invited from all interested parties. They may be addressed to the Law Enforcement Standards Laboratory, National Bureau of Standards, Washington, DC 20234.

Lawrence K. Eliason, Chief
Law Enforcement Standards Laboratory


Saw cuts 5/32 in (0.40 cm) deep and greater than 0.090 in (0.023 cm) wide on 2 in (5.08 cm) centers in each of the three pieces that make up the test fixture
2x4x22 in, two required (5.08x10.16x55.88 cm)
1x10x22 in, one required (2.54x25.40x55.88 cm)
5-23/32 in (14.53 cm)

NOTE: Support blocks are any suitable material. The original test fixture was wood. A total of 10 plates should be provided.

FIGURE 1. *Test target.*

TEST EQUIPMENT

- Test layout for instrumental velocity as prescribed in ANSI Z299.3* (see fig. 2).
- Universal receiver and mount.*
- Standard velocity and pressure barrels (nonvented).*
- Suitable test area with a backstop capable of safely stopping the bullets to be tested.
- Test target per figure 1.
- Square aluminum test plates, 2024-T3, 6±1/32 in (15.24±0.08 cm) on each side by 0.090±0.004 in (0.023±0.010 cm) thick.

TEST PROCEDURE

Set up the test equipment as prescribed in ANSI Z299.3.* Use the universal receiver mount to firmly clamp the universal receiver, with the barrel horizontal, in such a manner that the alignment of the weapon is not altered when it is discharged.

Position a sheet of cardboard behind the second screen of the velocity layout and fire a pretest round through the cardboard to determine the line of flight and the point of impact of the bullet. Place the test target in back of the sheet of cardboard, with the center of the first target plate in line with the bullet hole made by the test round, and then remove the cardboard. Fire one round of the ammunition to be tested in the test gun. Count the number of plates in the test target that are perforated by the bullet just fired.

The laboratory that employs this single-round procedure should repeat it based on a recognized sampling plan to assure statistical reliability in sampling and labeling as "Armor Piercing."

Note: Plates of the test target may not be reused if they underwent any impact during a previous test.

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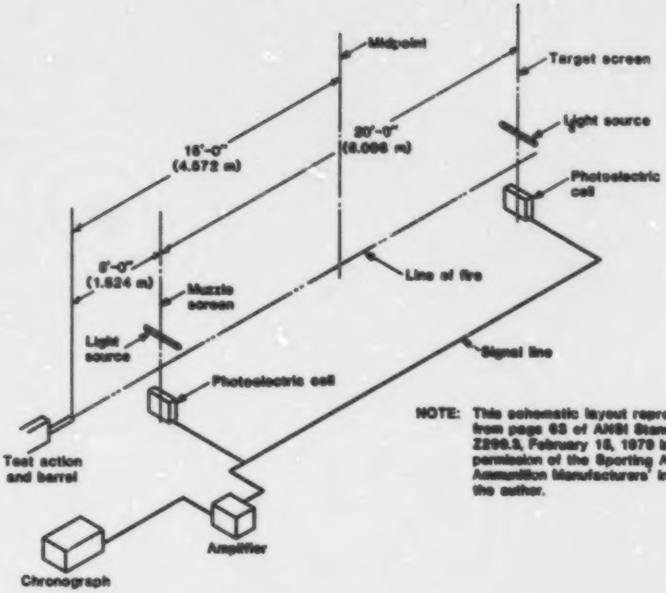
*Ibid


Midpoint
Target screen
Light source
Photoelectric cell
15'-0"
(4.572 m)
20'-0"
(6.096 m)
5'-0"
(1.524 m)
Muzzle screen
Line of fire
Light source
Signal line
Photoelectric cell
Test action and barrel
Amplifier
Chronograph

NOTE: This schematic layout reproduced from page 63 of ANSI Standard Z299.3, February 15, 1979 by permission of the Sporting Arms & Ammunition Manufacturers' Institute, the author.

FIGURE 2. *Schematic velocity test layout for instrumental velocity at 15 ft (4.572 m) over 20 ft (6.096 m).*

NBS-114A (REV. 2-80)

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BIBLIOGRAPHIC DATA SHEET (See instructions)

1. PUBLICATION OR REPORT NO.
NBSIR 84-2884

2. Performing Organ. Report No.

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4. TITLE AND SUBTITLE

Test Procedure for Armor-Piercing Handgun Ammunition

5. AUTHOR(S)

Daniel E. Frank, Program Manager

6. PERFORMING ORGANIZATION *(If joint or other than NBS, see instructions)*

NATIONAL BUREAU OF STANDARDS
DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20234

7. Contract/Grant No.

8. Type of Report & Period Covered
Final Report

9. SPONSORING ORGANIZATION NAME AND COMPLETE ADDRESS *(Street, City, State, ZIP)*

National Institute of Justice
U.S. Department of Justice
Washington, DC 20531

10. SUPPLEMENTARY NOTES

☐ Document describes a computer program; SF-185, FIPS Software Summary, is attached.

11. ABSTRACT *(A 200-word or less factual summary of most significant information. If document includes a significant bibliography or literature survey, mention it here)*

A test method and test parameters are defined for discriminating between armor-piercing handgun ammunition and nonarmor-piercing handgun ammunition. A multi-plate aluminum test target is described where the number of plates perforated by the bullet, when fired at the test target out of an industry standard velocity gun, performs the discrimination between armor-piercing and nonarmor-piercing bullets.

12. KEY WORDS *(Six to twelve entries; alphabetical order; capitalize only proper names; and separate key words by semicolons)*

armor-piercing ammunition; bullets; handgun ammunition; penetration test; test methods; test plates

13. AVAILABILITY

☒ Unlimited
☐ For Official Distribution. Do Not Release to NTIS
☐ Order From Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
☒ Order From National Technical Information Service (NTIS), Springfield, VA. 22161

14. NO. OF PRINTED PAGES
9

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$7.00

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Mr. **Kramer**. Our research efforts were focused on development of a test method that would be reliable and easily replicated. The test method, based upon ballistic performance, permits ammunition to be classified as armor-piercing or not based upon demonstrated penetration characteristics when fired at an array of 10 aluminum plates of a specific composition, thickness, and spacing.

The final application of the NBS test method, which is a performance base test method, requires that a threat level be stipulated by those responsible for establishing such criteria. Once a threat level is stipulated an equivalency can be established—an equivalency of the number of plates penetrated—which could be used to discriminate between ammunition for classification purposes.

In conclusion, I would like to note that the test methods and standards developed by the NBS—be it for this case or other activities that the Bureau engages in—are for use by the public, private sector, by other government agencies, and by those who have the authority to promulgate and enforce standards and regulations.

It must be recognized that the Bureau of Standards is not a regulatory agency, and that NBS only develops the technical basis for voluntary national standards. NBS does not seek to mandate the use of these standards.

Mr. Chairman, that concludes my prepared statement. Dr. Frank, Dr. Early, and I are prepared to respond to any technical questions which you may have with regard to the work of the National Bureau of Standards.

[The statement of Mr. Kramer and the biographical sketches follow:]

U.S. DEPARTMENT OF COMMERCE
WASHINGTON, D. C. 20234
STATEMENT OF
SAMUEL KRAMER
DEPUTY DIRECTOR
NATIONAL ENGINEERING LABORATORY
NATIONAL BUREAU OF STANDARDS
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
ON ARMOR PIERCING AMMUNITION
JUNE 27, 1984

Mr. Chairman, Members of the Committee: I am Samuel Kramer, Deputy Director of the National Engineering Laboratory, National Bureau of Standards (NBS). I am accompanied by Dr. Daniel Frank of our Law Enforcement Standards Laboratory, who will assist me in responding to your technical questions with respect to the work conducted by NBS.

The NBS has provided technical support to the National Institute of Justice (NIJ), formerly the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration, since 1971. This support program is funded by NIJ and is carried out by our Law Enforcement Standards Laboratory (LESL). The LESL program focuses on the application of science and engineering to the problems of criminal justice and was established in response to the recommendations of the President's Committee on Law Enforcement and Administration of Justice. Our support of the NIJ encompasses a variety of subjects including weapons, communication systems, and protective equipment for use by the police community, such as body armor. In fact, the first standard that the NBS developed for the NIJ, which was published by the Department of Justice, was for the "Ballistic Resistance of Police Body Armor" (NILECJ-STD-0101.00 dated March 1972).

NBS provides technical support to the NIJ and has recently issued a report setting forth a "Test Procedure for Armor-Piercing Ammunition." A brief description of our work in support of the NIJ and an explanation of the test procedure should be of benefit in understanding our role.

The NBS research relative to body armor centered on the establishment of ballistic threat level classifications and reliable test methods to evaluate the level of protection that a product provides when impacted with a projectile from a firearm. As such, the primary concern was that the body armor resist penetration from a given ballistic threat and also prevent injury as a consequence of blunt trauma. The NBS conducted this research in conjunction with other government agencies, the private sector, and the law enforcement community, including the International Association of Chiefs of Police (IACP) and the U.S. Army laboratories at Edgewood Arsenal, Aberdeen Proving Grounds, and Natick, Massachusetts.

Subsequent to developing the standard for body armor, NIJ requested that the NBS develop a test method for identifying "armor piercing ammunition." The test method that was developed is described in NBS publication, NBSIR 84-2884, dated May 1984, "Test Procedure for Armor-Piercing Handgun Ammunition." Mr. Chairman, with your permission, I would like to offer a copy of the report for the record.

Our research efforts were focused on development of a test method that would be reliable and easily replicated. The test method, based upon ballistic performance, permits ammunition to be classified as armor piercing or not based upon demonstrated penetration characteristics when fired at an array of ten aluminum plates of specific composition, thickness, and spacing.

The final application of the NBS test method requires that a threat level be stipulated by those responsible for establishing such criteria. Once a threat level is stipulated an equivalency can be established (number of plates penetrated) which could be used to discriminate between ammunition for classification purposes.

In conclusion, I would like to note that the test methods and standards developed by the NBS are for use by the public and private sector and by those who have the authority to promulgate and enforce standards and regulations. It must be recognized that NBS is not a regulatory agency, and that NBS only develops the technical basis for voluntary national standards. NBS does not seek to mandate the use of these standards.

This concludes my prepared statement. We are prepared to respond to technical questions with regard to the work that NBS has conducted.

Thank you.

Samuel Kramer
Deputy Director for Programs
National Engineering Laboratory
National Bureau of Standards

Mr. Kramer, who serves as Deputy Director for Programs, National Engineering Laboratory, is a graduate civil engineer and has done graduate study in the field of public administration.

Mr. Kramer was in the military service from September 1950 through August 1953, during which he served both in the United States and overseas. Mr. Kramer worked in the engineering and construction industry before joining the Corps of Engineers, where he served as a civilian engineer for 10 years. Subsequently, he joined the Bureau of the Budget, now the Office of Management and Budget, Executive Office of the President, where he served for over four years.

In July 1970, Mr. Kramer joined the National Bureau of Standards. In March 1978, Mr. Kramer was appointed the Associate Director for Program Coordination of the NBS/National Engineering Laboratory with responsibility for the coordination, monitoring of programs with outside organizations, other Federal agencies, state and local governments and international bodies.

In January 1981, Mr. Kramer was appointed Deputy Director for Programs of the NBS/National Engineering Laboratory with expanded responsibilities in the management of the Laboratory's overall programs, including research in applied mathematics, electronics and electrical engineering, manufacturing engineering and automation, building technology, fire research, and chemical engineering. He also supervises the activities of the Law Enforcement Standards Laboratory and the Office of Energy-Related Inventions.

Mr. Kramer is a registered professional engineer (P.E.) and is a member of the American Society of Civil Engineers and the National Society of Professional Engineers.

Dr. Daniel E. Frank
Program Manager, Protective Equipment
Law Enforcement Standards Laboratory
National Engineering Laboratory
National Bureau of Standards

Dr. Daniel E. Frank is the Protective Equipment Program Manager for the National Bureau of Standards' Law Enforcement Standards Laboratory. He earned a B.S. in Electronics from Drexel University, a M.S. in Communications and a Ph.D. in System Theory from the University of Pennsylvania. His experience includes nine years in developing Instrumentation for the Navy, five years in Fire Control for the U.S. Army Frankford Arsenal, six years in Instrumentation and Materials Handling for the U.S. Postal Service, and four years with the Law Enforcement Standards Laboratory. Dr. Frank has studied ballistics for over twenty-five years.

James Early

BS in Metallurgical Engineering, Lehigh University 1959

PhD in Metallurgy, Rensselaer Polytechnic Institute 1963

Joined staff of Metallurgy Division of National Bureau of Standards in 1963 and currently a senior staff member of the Metallurgy Division at NBS. Serves as a consultant in field of powder metallurgy to NBS and other Federal agencies.

Previous research activities included areas of powder metallurgy, metal solidification, and failure analyses of pressure vessels, hydrogen effects in steel, fracture studies of pipeline girth welds.

Current research interests include rapid solidification of metal alloys and consolidation of metal powders as part of the Metals Processing Laboratory at NBS.

Mr. HUGHES. Thank you, Mr. Kramer. What we will do, if it is agreeable with you, is just defer questioning until we hear from Mr. Kass.

Mr. Kass, welcome.

Mr. KASS. Thank you, Mr. Chairman, members of the committee, and distinguished visitors.

You have my prepared statement. I will not read it in its entirety. Basically why I came down here is to point out the fact that there are other people that need this ammunition other than Federal, State, and local law enforcement.

One of these items was just touched on by the gentleman to my right and that is the private sector manufacturing police protective materials such as body armor manufacturers, bulletproof glass manufacturers, armor vehicle manufacturers. If they cannot have access to this ammunition they can't build a better mousetrap.

The other area that is of concern to me is that university and private sector think tanks, R&D organizations. The American system for technology advancement is not always on Government contractors—I am sure you are all aware of—a lot of stuff is developed by industry, submitted to the Government, and if it meets the criteria and the needs of the Government, is, therefore, adopted.

If industry will not have access to this type of material for testing and development of both protective materials and new products in the ammunition industry, we will put a crimp in the American enterprise system.

The other area that I am concerned about—and this is solely me—is that the cost of this ammunition is extremely expensive, a normal round, you are talking 10, 15, 20 cents a round. This armor-piercing ammunition starts at $1 and works up, some as much as $5 or $6 a round. Manufacturers do not sell by the round, they normally sell by the case; they might, in some exceptions, sell by the box of 50 rounds.

Police crime laboratories, especially the small ones, the county crime labs, and the small cities that have their own crime lab, need this ammunition in case there is a homicide with it, or a shooting, whether it be used by the police or by the criminal, to identify it. They cannot afford to buy it by the box.

Forensic Ammunition Service provides from one round up, one round for their reference identification collection, if their local legislature is interested in possibly outlawing the use. I am sure you are aware of many legislatures have, I have provided the ammunition to the appropriate law enforcement agencies for testing, whether it be 5 rounds or 7 rounds, or 12 rounds, of the various types to keep the cost down.

The same thing with industry, when they want to test their product they need to buy small quantities, which are not available through the manufacturers or importers as a rule.

I would like to see some provisions that this service can be continued to those with a legitimate need. Let me elaborate just a hair. My procedure has been up until this point that I will only supply it on signed purchase orders signed by a senior police official, or in the case of a large city like Chicago, signed by a duly authorized purchasing agent of the city, but it must be on a department purchase order. Known police product manufacturers, protective material, such as Second Chance, Pointblank, Vector, and GE, that are known manufacturers, I will sell directly.

If I get a phone call from some company and he says he is making body armor I have never heard of, I feel if he is legitimate his local police department knows about him, I then ask him to ask the local police chief to order it for him and make arrangements to reimburse the county or city for that ammunition.

I have been highly restrictive because 99 percent of my friends are law enforcement—related and I am not going to put their life on the line. Unfortunately, I am sure there are other people in this world that are interested in the almighty buck than the protection of people.

The only other comment I do have to say is I have been in the development of ballistic helmets and body armor with Vector Division of Javelin and with several other companies. I don't want to disagree that the test methods that they are describing here with aluminum plates may be acceptable, however, police officers are not walking around with aluminum plates. I feel that if you really want to do the job right, there is nothing like firing it against Kevlar, which is what you are trying to simulate. You know, we may save $100 in the long run but we may not get the results that we always want. And Kevlar does come in many types.

If it is felt that the verbiage description of armor-piercing is not adequate as given in the bill, H.R. 5845, then a very specific standard must be set up of specifying the type of Kevlar, the number of layers of Kevlar, the barrel length of the weapons to have tested against, and the distance from which the barrel is held from the Kevlar. This is very critical because, otherwise, you are opening a can of worms.

The only other comment I have is that armor-piercing technology is something that is constantly changing, there are new and improved rounds. However, the verbiage description that is given covers all basic technology as currently used today in the manufacture.

Your point was well taken about the other materials that may be used for core materials. However, the majority of those that you mentioned are soft, they are nonferrous, and, as such, they would act like lead or more so in causing expansion and, therefore, not present a problem as far as armor-piercing. For a bullet to be armor-piercing you don't want it to expand and mushroom when it hits. And if it mushrooms, naturally it is going to present more area and, therefore, you know, it is not going to penetrate.

But your point is well taken and you might want to include in addition to the list that was submitted, add the term at the end "and all other ferrous metals." Ferrous metals being magnetic as a rule and, therefore, very hard, and not used as bullet jackets because they would cause more derifling of the weapon than they would be to engage the rifling.

Thank you, sir.

[The statement of Mr. Kass follows:]

I would like to start off by stating my support for this or any other legislation which will help to put criminal offenders off the streets for longer periods. However, of any greater importance is the fact that this legislation is designed to reduce the danger to law enforcement personnel, as well as, the public from a person or persons who are capable of committing personal violence.

A major point of this bill is the fact that it does not put any additional burden on the honest, law abiding citizen, only the criminal with certain exceptions which I would like to expand on.

There is a need for this type of ammunition to parties other than law enforcement and government. The first of these is industry. Manufacturers of police protective devices such as body armor, ballistic helmets, riot shields, etc., need to test their products in order to insure they meet the requirements of law enforcement, as well as developing new and improved products that are even more effective.

Other industries that come to mind are bullet proof glass manufacturers whose products are used in banks, gas stations and taxi cabs. Another is the transportation industry that builds bullet proof cars for governmental personnel and other dignitaries. The armored car manufacturers whose products are used to transport valuables and even personnel such as government witnesses in criminal cases.

University and private research institutions who are working on both governmental and industry grants. This names but a few of many fields that will be hampered by this legislation unless amended.

The next matter is the availability of AP ammunition to persons and entities who are legally entitled to purchase it. Most manufacturers will sell only by the case, some may sell by the box (normally 50 rounds per box). When you look at the cost of this ammunition of $1.00 per round and up, you can appreciate the fact that police forensic crime laboratories cannot afford to purchase a box of each. Therefore, there must be provision for supplies other than the manufacturers who will provide what is required to these organizations. Forensic Ammunition Service, which I own and operate, does this by supplying from one round to police laboratories, known law enforcement equipment manufacturers, as well as the Department of Defense and other federal government agencies.

The last matter is one that I feel also deserves your consideration, and that is the cartridge collector. There are by my estimates from 10,000 to 50,000 collectors of ammunition. It is no different than collecting stamps, coins, beer cans or barbed wire. These collectors have paid $3,000 and more for a single cartridge for their collections. This would be like saying to stamp collectors that as of this date you can no longer acquire or import stamps that are red in color. There are collections in the U.S. today that would bring over a half million dollars at auction. The people who collect and pay hundreds and even thousands of dollars for a single specimen would no more thing of firing it then you gentlemen who consider betraying your country.

Yet this bill puts a burden and restrictions on this group of honest law abiding citizens. By having these cartridges, this group would present no danger to law enforcement or the public.

The last matter I wish to comment on is the criteria by which testing will be done to determine which cartridges are to be classified as armor piercing. Many factors enter into what is armor piercing; these include, but are not limited to: mass, velocity, physical shape, hardness, etc. I have been involved in several discussions on the matter and it is probably one of impossibility to describe in words. I would, however, like to say that the definition proposed in H.R. 5845 is an adequate definition for what constitutes armor piercing ammunition. If, however, a testing procedure were contemplated, it should duplicate what we are trying to prevent, the piercing of soft body armor. Therefore it is my feeling that a standard of "V" layers of type "X" kevlar, be used out of a handgun, of "Y" length barrel at "Z" distance.

Again, I wish to repeat that I support the purpose and basic content of this legislation if properly amended to protect American industry and honest citizens. Thank you for your time and consideration of these matters.

Mr. Hughes. Thank you very much, Mr. Kass.

Let me just, if I might, pick up on that just a little bit.

As I read the proposed standard for armor-piercing ammunition it doesn't say how much of any one alloy for trace or for trace metals.

Mr. Kass. OK, we went through this in the State of Michigan which I was very involved in, and we tried to come up with a percentage. If the bill was restricted to handgun which, again, is a problem to define what a handgun is—if it was restricted to handgun that may be a possibility. However, because of the nature of some of the way rifled bullets are made, it becomes very difficult. The nozzler, which is strictly a hunting round, the nozzler partition bullet, has very little lead content compared to, say, a Sierra or a spear bullet, and this presents a problem.

Mr. Hughes. Most of the problem that police officers confront are with handguns.

Mr. Kass. Correct.

Mr. Hughes. One of the things that concerns me is that you could have a manufacturer make a projectile crafted like this Swedish projectile which has a small lead core. In fact, you could reduce it to just a little more than what you would consider trace. Trace, to me, suggests that it is the impurities that you would have in most metals, I would presume.

Mr. Kass. Correct.

Mr. Hughes. So it would be so easy to avoid being caught in this standard by having just a small amount of some other ferrous or non-ferrous metal.

Mr. Kass. However, I would feel that anybody trying to go to that extreme to circumvent this law could be handled by BATF in an administrative way, maybe include in the bill, in addition to the verbiage description say, "and any other ammunition the Secretary so defines as being armor-piercing."

Mr. Hughes. We would have to provide that for the Secretary to have that authority, though.

Mr. Kass. Yes, that is what I am saying. That way, if somebody tries to circumvent it, the Secretary would have the authority to include it under this bill and prevent its sale.

Mr. Hughes. That wouldn't be permitted under the terms of this bill?

Mr. Kass. No, I am saying add to the term at the end, "and any other ammunition the Secretary so rules as armor-piercing."

Mr. Hughes. Did you hear my colloquy with Mr. Owen and Mr. Walker about how much armor-piercing ammunition this legislation would reach?

Mr. Kass. Yes, sir.

Mr. Hughes. I attempted to find out from him how much of a class we are talking about of the overall armor-piercing ammunition that is available in the marketplace.

Mr. Kass. OK. Now, I have been fortunate enough to be able to handle this armor-piercing ammunition for the police crime labs. The police crime labs naturally have to all ammunition market in the United States for identification. The percent of the five or six different types of armor-piercing ammunition currently imported or manufactured, I would say the total percentage of my sales would be less than one-tenth of 1 percent.

Mr. HUGHES. Less than one-tenth of 1 percent?

Mr. KASS. Based on my sales to police crime labs as far as reference material goes.

Mr. HUGHES. I was being rather liberal when I said 1 percent.

Mr. KASS. I will also say that the—and I think BATF does deserve some credit, that when they did ask for voluntary compliance, the manufacturers did comply. Whenever I order ammunition for resale to the police departments, because I am known to most of the manufacturers, you know, supplied it to me to resell—I always include a statement that this ammunition is only for resale to police crime labs, and they are very, very careful about their sales. I think the industry does deserve some credit.

Mr. HUGHES. They do. And you, perhaps, have not been here when we have praised the industry for making these voluntary constraints.

Mr. KASS. Can I bring up one other matter, Chairman Hughes?

Mr. HUGHES. Go ahead.

Mr. KASS. I know there is probably not going to be a lot of sympathy for it but I feel I should bring it up—and that is the matter of the cartridge collector. There are collectors that collect ammunition just like they collect stamps, coins, beer cans, barbed wire, and what have you.

I have been a cartridge collector, that is how I got into the business. Before I ran Forensic Ammunition Service, as a collector I was involved with AFTE, which is the Association for Firearms Tool Mark Examiners from all the police crime labs. I have been technical adviser to them for 10 years. Most research that is being used in forensics today is being done by cartridge collectors.

The crime labs, unfortunately, are overworked, understaffed, and the caseloads are not dropping.

I would hope there might be some kind of regulation worked out with BATF where the collectors can legitimately continue to collect and to do the research because these are honest citizens, most of them are lawyers, doctors, and businessmen. They have paid literally thousands of dollars sometimes for single specimens. They are not going to go out and shoot anybody with it. As a matter of fact, they shudder every time they see a weapon fired, you know, that might have a head stamp they are missing in their collection. But it is something that is to be considered.

This is a small group, I estimate between maybe 10 and 50,000 people that collect ammunition. But yet, it would be infringing on a hobby that many of them had for many years.

Mr. HUGHES. Thank you.

Mr. Kramer, have you examined the bullets that penetrate aluminum plates at a level that exceeds IIIA?

Mr. KRAMER. Yes, sir.

Mr. HUGHES. OK. Would you discuss that ammunition with us and present your analysis of their construction and materials?

Mr. KRAMER. Yes, sir. As I noted, the test method that we developed, which is in the publication NBSIR 84-2884 has to have a threat level associated with it. We were directed by the National

Institute of Justice to use a IIIA test level for our experimental work to evaluate a very small select group of ammunition.

Mr. Hughes. Why don't you describe what that IIIA is?

Mr. Kramer. Correlated, OK.

This can best be illustrated if I may go back to the original body armor standards. When the original body armor standards were issued in 1972, there were three levels of protection for the body armor. At that time they were not labeled as such but they have since become known as level I, level II, and level III. In December 1978, a revision to the standard for the body armor was issued by the National Institute of Justice for which we provided the technical work.

At that time, there was added a level IIA body armor which was above level I and we also added a level III at that time, which was between the levels II and IV in degree of protection afforded.

We have just recently completed work on another revision to the body armor standard. That revision to the body armor standard has been submitted to the National Institute of Justice for their consideration and promulgation. This latest revision includes a new level IIIA. A level IIIA is a level that sits between level II and level III.

Mr. Hughes. What is that? What kind of protection does that afford?

Mr. Kramer. OK. Let me say that the threat IIIA is considered to represent now the maximum protection available from soft body armor manufactured using the Kevlar fabric of today's technology. For the protection purposes, it is to protect against the threat of a 9 millimeter, 124 grain, full metal jacket bullet, and the .44 caliber, 240 grain lead semi-wide cutter bullet—both with nominal impact velocities of 1,400 feet per second.

As I noted in my testimony, Mr. Chairman, the levels assigned and the way of assigning them are based on a performance test. We do not get involved in how the bullets are constructed, the material or anything else, but rather, the vest must resist the penetration from these rounds and not cause a deformation that would result in blunt trauma. It is a performance test.

Mr. Hughes. What distance are we talking about, because that is a significant factor, is it not?

Mr. Kramer. Five meters, that is shown in the test procedure, from the end of the muzzle to the armor to be penetrated. This is described in the Test Procedure published by NIJ that we developed for evaluating the Ballistic Resistance of Police Body Armor. It is a standard test method for the evaluation of the armor.

Let me return to the test procedure for armour-piercing ammunition. Knowing what we wanted to protect against, we conducted a series of tests on the apparatus to ascertain how many aluminum plates would be pierced utilizing the same type of ammunition that we are protecting against in a IIIA level threat.

The reason we went to a performance test such as this, is because with aluminum plates we can specify the composition, the size, the thickness, the alloys, and the spacing so the test can be replicated. In this way we are not depending on any one vest or fabric.

In running that test we found that the .355 caliber or less ammunition that we were protecting against in the level IIIA would penetrate a maximum of four plates. And in calibers greater than .355, it would penetrate a maximum of six plates.

Therefore for doing our evaluation if it penetrated more than that amount we would consider the ammunition to be, quote, "armor-piercing" and I have to put it in quotes, because we are not the agency to make the disignation but we would consider it for test purposes to be "armor-piercing" since we would assume it would go through a level IIIA vest.

Accordingly, we said if it (the ammunition) goes through five or more plates in a smaller diameter, it would be "armor-piercing." If it would go through seven or more plates in the larger diameter, we would consider it "armor-piercing."

We then ran some tests. The tests were not all-inclusive. I want to state that the testing was not based on any kind of statistical sampling, and was not based on any study of the rounds being used since we have no knowledge of that.

I think—Dan, correct me if I am wrong—the selection of ammunition for the tests was based on what we can lay our hands on.

Mr. Frank. [Nodded affirmatively.]

[Diagrams shown.]

Mr. Kramer. And in running the tests we found that there were three types of ammunition, actually four, one was of the same type but in two different calibers, that penetrated the plates that we would consider to be above a IIIA level threat.

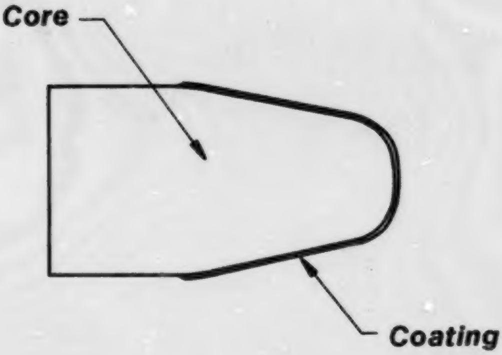
That ammunition is described, and I think you have some of them up there—one was a solid material, Mr. Chairman, that had just some coating on it, we call that round G. Another one had a jacket and what we call the liner and a core, which is round H. And another round was what we are calling round E, that had the most complex construction, an outer jacket, had a liner, an inner jacket, and had a core.

After we found these had penetrated, we did an examination of them and we found what the materials were made of based on an analysis.

Mr. Hughes. I wonder if we can make as part of the record, first of all, the three different exhibits which you have offered. I think they will be helpful.

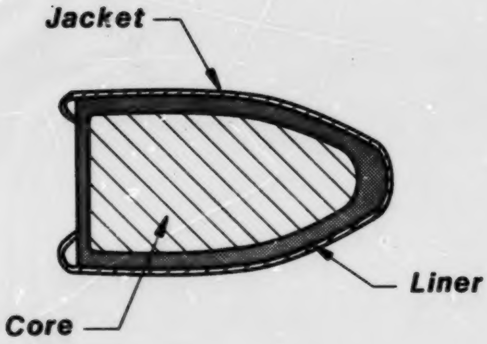
Mr. Kramer. Yes.

[The diagrams follow:]


Core
Coating

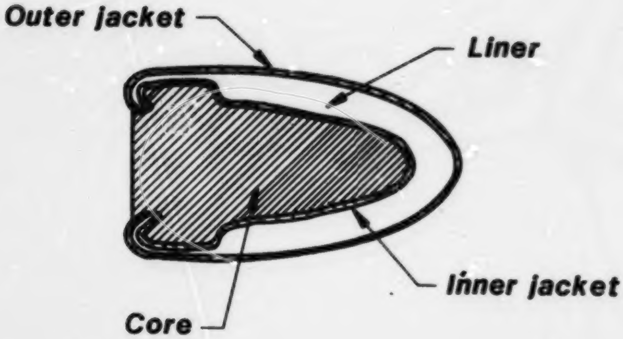
Drawing not to scale

Round G-1


Jacket
Liner
Core

Drawing not to scale

Round H


Outer jacket
Liner
Inner jacket
Core

Drawing not to scale

Round E

Mr. **Hughes**. If I understand your testimony correctly, I am not sure I have any of the ammunition except for this one that seems to be round E, the complex round with a outer jacket, a liner, an inner jacket, and a core. That would be the Swedish——

Mr. **Kramer**. I believe, from your description, it is the round we have we have called the Swedish round, I think we are talking about the same thing.

Mr. **Hughes**. That is what you referred to as round E?

Mr. **Kramer**. Round E is what we have defined as the Swedish round.

Mr. **Hughes**. And that would penetrate?

Mr. **Kramer**. The "Swedish" round did in our test——

Mr. **Hughes**. How many different plates did that penetrate?

Mr. **Kramer** [continuing]. We fired three shots of that type of round and in all three shots it penetrated either five or six plates, depending on the velocity.

Mr. **Hughes**. I see.

Mr. **Kramer**. But it penetrated more than the IIIA level.

Mr. **Hughes**. I see.

So it clearly penetrates the level II or IIA vests that are presently marketed?

Mr. **Kramer**. Yes, sir, we would expect it to.

Mr. **Hughes**. OK.

Let me just, if I might, since I have some experts on metallurgy and alloys here today, can you give me some idea of how many different types of ferrous metals would be suitable for constructing a projectile, any idea?

Mr. **Early**. OK, I am not a ballistics expert, I am not familiar with all of the criteria that go into designing ammunition. However, there are hundreds and hundreds of recognized commercial ferrous alloys, many of which would probably possess the appropriate properties of hardness to be suitable, notwithstanding cost or ease of fabrication.

Mr. **Hughes**. So that the seven different metals that are enumerated in this proposal represent a fairly small part of the different ferrous metals that could be utilized?

Mr. **Early**. It depends on the final interpretation of some of those words. For instance, the word steel.

Mr. **Hughes**. That is the second thing we are going to get into.

Mr. **Early**. OK.

Mr. **Hughes**. Why don't we pick up there? For instance, what do we mean by steel?

Mr. **Early**. To a metallurgist, steel is a iron-based alloy, almost always containing carbon, manganese, it may well contain sulfur, phospherous, and a number of other alloying elements. There are various sub-classes of steels which metallurgists recognize, they all have names which connotate certain characteristics about the alloy.

Mr. **Hughes**. If in fact you interjected other substances that are not generally identified as being a part of what is commonly known as steel, I would presume that that would not be what we referred to as steel, then?

Mr. **Early**. That is correct, there are a number of commercially available iron-based alloys which do in fact contain some of the same alloying elements which are not normally ever referred to as steels.

Mr. Hughes. I see.

How about brass? What do we mean by brass?

Mr. Early. Brass is a generic term which covers a whole class of copper-based alloys in which the principal alloying agent is zinc. There are several dozen commercially available compositions which generically are all called brass.

Mr. Hughes. So you could very easily create a difference in composition using zinc as a major component and create something other than brass?

Mr. Early. That is correct.

Mr. Hughes. How about bronze? What do we mean by bronze?

Mr. Early. Bronze, again, is another generic term which is broken down further into sub-classes of bronze as phosphor bronzes or copper-based alloys in which tin is the major alloying addition. Aluminum bronzes are copper-based alloys in which aluminum is the major addition, there's silicon bronzes. So it is a generic term without specificity.

Mr. Hughes. Can brass sometimes be bronze?

Mr. Early. The names of many of these alloys have been used over long periods of times and in any system of guidelines for naming things there are exceptions, and there are some alloys whose common name is at odds with the chemical definitions that I have just given you.

Mr. Hughes. The point I am trying to make is that a metallurgist could very easily vary in a very minor fashion the composition and raise some question as to whether it is truly bronze or steel or brass.

Mr. Early. I believe so.

Mr. Hughes. Mr. Kass, is there anything that you want to say on that score?

Mr. Kass. My suggestion about the ferrous and alloys of the above I think would cover most of your concerns, Mr. Hughes, because then would cover any variations and composition within these general categories such as brass and steel, with the hundreds of steels, and you say any alloys thereof would cover that and protect against, shall we say, house brands. You know, it is like in the medical industry, you have your sulfur drugs and then somebody comes along and calls it X, Y, Z—you know, they don't refer to sulfur, you know, then house brand names and everything else. If we say and alloys thereof, I think we will protect ourselves.

Mr. Hughes. Aside from the seven materials identified in the pending legislation, are there other hard materials that could be used to make projectiles to make firearms?

Mr. Kass. I think this bill has pretty well covered all of them. I worked in the metallurgic testing field for 15 years, I was with Wilson Instruments, who makes the hardness testers, both the Rockwell and the Tucons, and I served as product manager for them. When BATF called me and we discussed this definition, we try to all encompass anything that might be employed to circumvent the law.

Mr. Hughes. How do you feel about that, Mr. Kramer?

Mr. Kramer. I would prefer to defer to our metallurgist.

Mr. **Early**. Would you repeat that, please?

Mr. **Hughes**. Yes, my question is, we have identified seven hard materials that could be used to make projectiles for firearms, and my question was, could one fabricate a bullet from other very hard materials?

Mr. **Early**. Yes. It may not be economical but there are certainly other hard materials with similar hardness that are not on the list.

Mr. **Hughes**. Not on the list.

Mr. **Kass**. Can I interject, Mr. Hughes.

If we included all ferrous materials at the end, would that pretty well cover it?

Mr. **Early**. I do not have with me specific information, but there are large classes of alloys which are designed for totally different applications which are of high strength and generally high hardness which would be compatible in the sense that steels are producible in an extremely wide range of hardness values. There is nothing in the definition which specifies hardness precisely. So there is tremendous variability in hardness of brass as well as steel. I think there are some other materials. There are certainly ceramic materials which are certainly as hard as the materials in this list.

Mr. **Hughes**. Mr. Kass, would it be very difficult for one, in an attempt to avoid definition of armor-piercing in this proposed legislation, to fabricate a projectile that would be by and large steel or brass that would have a very small amount, let's say, of lead, right in the center, very small, more than a trace, but——

Mr. **Kass**. It is possible, Mr. Hughes.

Mr. **Hughes**. Would it be difficult?

Mr. **Kass**. No.

Mr. **Hughes**. OK.

Mr. **Kass**. That is why my suggestion was to also include at the end of the list, and any other ammunition the Secretary so feels is armor-piercing, to take care of those illegitimate businessmen that would try to circumvent the law.

Mr. **Hughes**. Unfortunately, as you said, not everybody is motivated by the same motivations and good intent that you have expressed. I wish that the world was full of more people like yourself but, unfortunately, there are some that do look at the bottom line, the dollars to be made, and we have to deal with that all the time.

Mr. **Kass**. Yes, it is unfortunate, but for as good or bad as it is, we have to live with the situation and try to prevent these people. It is a hard thing, and I apologize for those people. I am not in the industry per se, but I apologize for any people in the industry that puts the almighty dollar ahead of the public safety.

Mr. Hughes, thank you for your time.

Mr. **Hughes**. Thank you, Mr. Kass. Mr. Sawyer.

Mr. **Sawyer**. No, thank you, Mr. Chairman.

Mr. **Hughes**. Thank you very much. I appreciate your time and I am sorry that we have had such a delay here today.

Our final panel today consists of a distinguished list of representatives of law enforcement organizations. We have Norman Darwick, executive director of the International Association of Chiefs of Police; David N. Konstantin, research associate, Police Executive Research Forum; Art Stone, National Legislative Committee, Fraternal Order of Police; Edward Murphy, legislative counsel, International Brotherhood of Police Officers; Sterling B. Epps, national cochairman, Legislative Committee, National Association of Police Organizations, and Thomas P. Doyle, executive vice president and national cochairman, Legislative Committee, Federal Law Enforcement Officers Association.

Gentlemen, we welcome you here today. We have your statements which will be made a part of the record, without objection, you may proceed as you see fit.

Why don't we start with you, Mr. Epps. I understand you have a meeting, so we will see if we can't accommodate you first. Welcome. I indicated that we have your statement which has been part of the record and you may proceed as you see fit.

TESTIMONY OF STERLING B. EPPS, NATIONAL COCHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS; NORMAN DARWICK, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; DAVID N. KONSTANTIN, RESEARCH ASSOCIATE, POLICE EXECUTIVE RESEARCH FORUM; JOHN J. HARRINGTON, PAST NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE; AND EDWARD MURPHY, LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

Mr. EPPS. I want to apolcgize to you, Mr. Chairman and committee members, for my commitment, but I have an appointment with Senator Glenn, and my associate Tom Doyle has left for that appointment. I would request that his statement be made a part of this committee's record, and my statement also.

Mr. HUGHES. It will be so received.

[The statement of Mr. Doyle follows:]

STATEMENT

OF

NORMAN DARWICK
EXECUTIVE DIRECTOR

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

BEFORE THE

SUBCOMMITTEE ON CRIME
OF THE
HOUSE COMMITTEE ON THE JUDICIARY

REGARDING

ARMOR PIERCING AMMUNITION

JUNE 27, 1984

Federal Law Enforcement Officers Association
170 Old Country Road - Suite 310
Mineola, N.Y. 11501
(516) 248-1355

TESTIMONY BY
THOMAS W. DOYLE,
FLEOA NATIONAL EXECUTIVE VICE-PRESIDENT &
LEGISLATIVE CO-CHAIRMAN
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES'
COMMITTEE ON THE JUDICIARY
ON
H.R. 5835,
JUNE 27, 1984

"A Professional Association for Federal Law Enforcement Officers"

My name is Thomas W. Doyle. I am the National Executive Vice-President of the Federal Law Enforcement Officers Association and its Legislative Co-Chairman. I wish to thank the House Committee on the Judiciary for the opportunity to testify on H.R. 5835. Such legislation is absolutely vital to those in public safety involved in straight law enforcement and protective duties. Passage of H.R. 5835 would benefit not only federal officers, but state, county and local law enforcement as well.

Let me state from the outset that the Federal Law Enforcement Officers Association, representing nearly 6000 men and women from 26 federal agencies, fully supports H.R. 5835. We believe the bill is an important first step in ridding the country of armor piercing ammunition, ammunition which serves no useful purpose to the lawful sportsman and gun collector. The ban on manufacture and importation of such ammunition is both practical and enforceable. More importantly, for the first time it has established a compromise upon which both pro and anti-gun forces can agree. Ultimately, of course, we in FLEOA hope the bill can be extended to provide sanctions for those who knowingly sell armor piercing ammunition as well.

We believe, as out colleagues in NAPO mentioned in their testimony, that the definitional problems as to what exactly constitutes armor piercing ammunition has been commendably resolved by the Departments of Treasury and Justice and the Office of Management

Mr. EPPS. We would like to point out that we are in support of any legislation that mandates penalties without the availability of either parole or probation for use of a handgun and/or ammunition in the commission of a crime.

We strongly support this bill, the bill I would refer to as the Biaggi bill, H.R. 5835, for the committee to consider. Mr. Biaggi has been a supporter of our viewpoint for years and has chaired all of the issues that we in the law enforcement consider important, and as you have, Mr. Chairman.

[The statement of Mr. Epps follows:]

and Budget. We also would encourage continued Congressional oversight so that rethinking on this issue can be initiated should the current definition prove inadequate for enforcement needs. In addition, we believe the mandatory 5 year imprisonment provision will serve as an added deterent.

Before closing I would like to acknowlege the distinguished Congressman from New York, Representative Mario Biaggi, who led the lonely fight to bring the issue of the "cop killer bullet" to public attention. His effort played a major role in bringing about H.R. 5835.

Finally, we in the Federal Law Enforcement Officers Association hope that swift enactment of H.R. 5835 will help eliminate the increasing threat of violence faced by public safety officers and citizens as well.

# #

Testimony of the
National Association of Police Organizations
in Support of H.R. 5835

The National Association of Police Organizations (NAPO) is an organization made up of affiliates from all parts of the country, representing some 45,000 working police officers nationwide. NAPO is primarily concerned with national legislation which affects the well-being of public safety officers throughout the United States.

For over two years, NAPO has supported legislation aimed at banning ammunition which can penetrate the most common protective vests worn by working police officers. Our organization has testified no fewer than four times on the need for legislation in this area. We thank those who have worked long and diligently on this effort and particularly the distinguished Congressman from New York, Representative Mario Biaggi.

As an organization which represents law enforcement officers, we are pleased to offer our support for H.R. 5835. We believe this bill will go a long way toward reducing the availability of armor-piercing ammunition in this country. While the bill does not ban the sale of armor-piercing bullets, we recognize the difficulties of practical enforcement, and believe that a ban on the manufacture and importation of such ammunition is both practical and enforceable.

Furthermore, we believe that the definitional problems of exactly what armor-piercing ammunition is have been adequately resolved by the Treasury Department, the Justice Department and the Office of Management and Budget. We understand that a working definition of armor-piercing ammunition was a thorny problem and we thank the departments involved for coming up with a sufficiently precise description to permit necessary and adequate enforcement. We also thank the Administration for its efforts in bringing together the various departments and constitutent groups to come up with a workable piece of legislation.

Mr. **Hughes**. Thank you. Thank you, Mr. Epps.

I wonder if your colleagues would bear with me for just a minute while we perhaps ask you some questions, then perhaps we can excuse you and then take up the balance of the panel.

Mr. **Epps**. Certainly.

Mr. **Hughes**. Mr. Epps, were you here during the morning session when we talked about some of the problems with the legislation as drafted?

Mr. **Epps**. Yes, I was.

Mr. **Hughes**. My concern is that the legislation as drafted doesn't really cover a great deal, and that gives me some concern. The bill has generated a great deal of interest and support because, I know I speak for my colleagues when I say this, we want to do something that is meaningful and we certainly don't want to overpromise and underdeliver. I think that what we have to do is try to fashion the best bill possible, one that has some substance to it.

I think the record is rather clear that this legislation pretty much codifies what has already been done voluntarily by manufacturers.

Second, it does not reach a serious problem area and that is the possession and sale of this ammunition, it doesn't reach that at all, and that is where the risk is. The risk as I see it, and I think you probably will agree, is not from the manufacturers changing their mind—that doesn't present a high risk in my judgment. The industry, I think, has been rather responsible in that way, and they are to be commended for it. I don't expect them, all of a sudden, to become irresponsible. So that is part of my concern.

The third part of my concern—and I am sure you have probably heard the testimony just a little while ago—is it would be very easy to defeat this legislation by just changing the composition or using other metals, which is not very difficult to do.

The fourth thing that gives me concern is that this would only reach such an infinitesimal part of truly armor-piercing ammunition.

I am just wondering at this posture, how do you suggest that we deal with it? Because this committee wants to do something that is substantive, that maintains a proper balance between protecting law enforcement and making sure that we do not intrude upon legitimate law-abiding citizens and their desire to own, possess, purchase ammunition to be used for legitimate sporting purposes.

Mr. **Epps**. I want to thank you for the opportunity to express on that.

I feel that one area that we need to address is the possession with intention to use the ammunition for the purpose of penetrating a police vest or a vest. I find no definitions in this bill of armor or that area. I think it is lacking in that.

My interest at this point is in getting this first baby step toward legislation that would make the importation and manufacture illegal and then reevaluate the bill at a later time and go back after those.

I would certainly support any criminal provisions for those that intend to use, possess, this projectile that we have broadly defined for the purpose of penetrating police armor.

Mr. HUGHES. I think the difficulty is, though, that this is such a special class ammunition which is not in general use today by the criminal element. In fact, we would be hard pressed to identify those arrests where this type of ammunition was possessed.

Mr. EPPS. Yes, I am aware of that.

Mr. HUGHES. And yet, there is all kinds of armor-piercing ammunition which we don't even begin to define here that is possessed by felons every day. We haven't begun to make it a felony to possess a handgun used in a violent offense to commit a felony to require a mandatory sentence.

It would seem nonsensical to make this special ammunition, which is such a limited class, a suspect class, or a class that is going to require enhancement, and yet not deal with a major problem, and that is possession of a handgun used in the commission of a felony.

I also worry because there are so many other things that we can do to protect police officers. The thing that concerns me is that BATF has a responsibility, for instance, to oversee the sale of handguns. As a matter of fact, they are charged with the responsibility of inspecting the various shops that sell handguns, they promulgate regulations that dealers have to comply with. In fact, one of their forms requires applicants for a handgun to answer a number of questions, one of which is: Do you have an arrest record; have you been convicted of a crime? Second, do you have a mental history? And yet, there is no followup.

It seems to me that that presents more risk, although many States today have some kind of a waiting period. It is interesting that you can walk into so many other States and defeat that. In our backyard here, you can walk into a gunshop and in 15 minutes walk out with a handgun after submitting a fictitious identification. I would submit that more police officers are shot by lunatics that filled out that form falsely and ended up shooting either a police officer, or their wife, or someone else.

Mr. EPPS. Yes; I just recently moved here from California. And California has a very good statute that possession of a weapon during the commission of a crime requires a mandated sentence without provision for a parole or probation.

Mr. HUGHES. New Jersey has one, and I am persuaded that it could be effective. Yet, we don't deal with that in this legislation. I share your concern that we don't have a standard in trying to determine what is truly armor piercing; not from the standard set forth in here because that is a limited class.

Mr. EPPS. Mr. Chairman, if I can be of any assistance to you or the members of your committee in any way in getting legislation that would offer our police officers and Federal agents or State agents some protection the National Association of Police Organizations and the Federal Law Enforcement Officers Association would certainly work overtime to get that legislation on the board.

Mr. HUGHES. Thank you.

I have often wondered what legitimate sporting purpose a silencer has, or what legitimate sporting purpose a machinegun has.

How about your organization or yourself, would you support a waiting period, Mr. Epps?

Mr. EPPS. Definitely, definitely.

Mr. **Hughes**. How about banning the machineguns and silencers, that is, forbidding the purchase, prospectively, not retroactively?

Mr. **Epps**. Yes; I would support that, but at this point I would not like to see this bill have other attachments to it. I think that this is a baby step, a very small step, toward putting some criminal sanctions on those that use a particular kind of ammunition in the commission of a crime. And those other steps we would strongly support and would be available to assist you in any way we can on those.

Mr. **Hughes**. Thank you, Mr. Epps.

Mr. Sawyer.

Mr. **Sawyer**. As I understand, you would not be in favor of adding other provisions to this bill?

Mr. **Epps**. Yes; I am not in favor of adding anything to this bill. I would like to see it move through as rapidly as possible so that we can get the criminal sanctions on the boards for those that would use this ammunition in the commission of any crimes.

Mr. **Sawyer**. We had some hearings either last year or in the last Congress. We thought when we first approached this problem that it was a fairly simple problem. They were then talking about Teflon bullets, if you will recall, and it was our impression—at least mine, I can only speak for myself—that all we had to do, was outlaw the use of Teflon on bullets. But it turned out that Teflon was more or less a buzz word and it wasn't very darn important whether you had the Teflon or not. It was more the shape of the bullet, the hardness of the bullet, the length of the barrel from which it was fired. The narrower or smaller the caliber, perhaps the more armor piercing it was with the second-chance vests.

And, finally, I think the chairman felt the same way I did—we backed off the issue because it looked like it was such a complex thing compared to how simple it had looked when we started out. So I was surprised to see that someone came forward with a new proposal. After reading it, I tend to agree, it is very much a baby step. Apparently the people trying to deal with it were overwhelmed the same way we were with trying to cope with it and trying to avoid, in effect, barring all ammunition which most of you were faced with if you were going to cope with the various aspects of it.

I am just fearful that there are members of this full committee, perhaps even the main sponsor of the bill, would not follow it through further, not let it go further, if we add very much to it.

On the mandatory sentencing, we in Michigan have a mandatory 2 years without either probation or parole either. I was an urban prosecutor there before I came here and I am sad to say, and I think the studies have shown, that mandatory sentencing is used more in plea bargaining than it is ever really enforced. If a guy pleads guilty to armed robbery, which is a capital offense in Michigan—we don't have the death penalty, but it will take up to life—you drop the gun charge, which is the mandatory 2 years.

I really think if we do put that in any legislation, we ought to put a prohibition against plea bargaining in it——

Mr. **Epps**. I agree.

Mr. **Sawyer** [continuing]. Because it was never intended to do that, and it is always ancillary to another charge. Obviously, if the guy has used the gun to commit a crime, he has committed the other crime, and he has gotten caught, and usually the other crime carries more than 2 years if a gun was involved. So the natural tendency is to swap or dropping of that to the pleading of the crime. And, consequently, the studies have shown that in those States that have it, that it has really been disappointing in the results, it has not been as productive as everybody thought it was, including many people in Michigan.

I personally think from watching it for a while, it is because of that plea-bargaining aspect. I think with a little careful study we could draft it so that once the charge is made it can only be disposed of by a court or a jury, and not get involved in the plea process.

Mr. EPPS. I certainly agree with that.

Mr. SAWYER. In any event, I am very sympathetic with the law enforcement community. One of my principal staff members back in my district is the wife of a police lieutenant and you can believe me, ever since she heard of this Teflon bullet thing, I have had no peace since we have not gotten one enacted. So I am very supportive, although it is sad to say I recognize this is only a feeble little step in the right direction.

Mr. EPPS. I think it is an important step that we have found common ground between pro- and anti-gun forces, where we can agree on some legislation. It is the first step and I hope that we can continue.

Mr. SAWYER. As the chairman said, I am a hunter, and I probably own 25 or 30 guns myself. You know, there is no earthly use or justification for a silencer, for example, that I can see, other than a collector with a nonfunctional gun. I wouldn't see any need for a machinegun, either, and certainly not these exploding bullets which are outlawed for use on game. Certainly the kind of bullet that would be armor piercing is almost self-defeating for big game hunting or any kind of hunting you would be doing since you want expansion and shock power as opposed to just pure penetration.

It is amazing the way the opposition comes out of the woodwork the minute you mention any of those proposals, and you would think those would be simple. I can understand where there would be strong resistance to regulation on long guns or ordinary ammunition, but those other peculiar things seem to me so totally isolated from the sporting field that it is hard to see how persons opposing those proposals really feel, but they do, believe me, I have listened.

Thank you very much for coming, I appreciate it.

Mr. EPPS. Thank you.

Mr. HUGHES. Mr. Epps, before you go, just let me say to you that I look forward to working with the law enforcement community in trying to develop something that is meaningful. But I must say, the way I see the testimony shaping up it doesn't seem to me that police officers are at risk from this particular kind of ammunition because it is already voluntarily withdrawn. So I think it is important for us to really try to fashion legislation that is going to be meaningful.

Mr. EPPS. I agree.

Mr. Hughes. I would like to do more than do something that has already been corrected.

Mr. Epps. I agree, however, I do like the criminal penalties that result from the use of this ammunition.

Mr. Hughes. That is a little easier to do than the other, but as I say, we have to at this posture determine what is politically achievable. And many of my colleagues are on that bill, I fear are not fully aware of just how little, I mean, very, very little, it is going to provide in the way of additional protection to the law enforcement community.

There is a limited amount of time left in this session and this committee is a very active committee—and I think that you must know that we are very deeply committed to protecting law enforcement.

Mr. Epps. Yes.

Mr. Hughes. And we want to do something meaningful, so I look forward to working with you.

Mr. Epps. I look forward to it.

Mr. Hughes. Thank you, Mr. Epps.

Mr. Epps. I want to thank my fellow panel members for allowing me to go first.

Mr. Hughes. Thank you.

Mr. Epps. Good day.

Mr. Hughes. OK, Mr. Darwick, I apologize for that. Mr. Darwick, we have your statement which is part of the record as the other panelists. You may proceed as you see fit.

Mr. Darwick. Thank you, Mr. Chairman, Mr. Sawyer.

On behalf of the International Association of Chiefs of Police, I want to thank you for this opportunity to discuss armor-piercing ammunition with you.

The IACP is a membership organization of over 14,000 members in 60 nations. We were first organized in 1893.

We address this subcommittee today on behalf of our members and the thousands of law enforcement officers whose lives are threatened by the availability of bullets capable of penetrating their soft body armor.

As you know, Mr. Hughes, the IACP has supported the legislation to ban these bullets since it was first introduced by Congressman Biaggi several years ago. The Congressman is to be commended for his efforts to get this legislation enacted.

In addition to Congressman Biaggi, I want to express the association's gratitude to all of the cosponsors of the legislation and, further, we want to congratulate the Justice Department and the Treasury Department, particularly the Bureau of Alcohol, Tobacco and Firearms, for their work in this area.

It is a complex matter and I want to tell you that we, the International Association of Chiefs of Police, support the legislation.

You have a copy of my statement and I will conclude at this point, and be happy to answer any questions which I know you are going to have.

Mr. Hughes. Thank you, Mr. Darwick. I have your statement and we have all read your statement. It is a comprehensive statement and we appreciate it.

[The statement of Mr. Darwick follows:]

It is our hope that swift enactment of this measure will eliminate a present danger for working law enforcement officers in this country. We urge both Houses to enact this bill before the end of this Congressional session and tell the public safety officers of this country that the Congress really cares about them.

ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, I WOULD LIKE TO THANK THE SUBCOMMITTEE FOR INVITING US TO EXPRESS OUR VIEWS ON LEGISLATION TO BAN ARMOR PIERCING AMMUNITION.

THE IACP IS A VOLUNTARY PROFESSIONAL ORGANIZATION ESTABLISHED IN 1893. IT IS COMPRISED OF CHIEFS OF POLICE AND OTHER LAW ENFORCEMENT PERSONNEL FROM ALL SECTIONS OF THE UNITED STATES AND MORE THAN SIXTY NATIONS. COMMAND PERSONNEL WITHIN THE UNITED STATES CONSTITUTE MORE THAN SEVENTY PERCENT OF THE MORE THAN 14,000 MEMBERS. THROUGHOUT ITS EXISTENCE, THE IACP HAS STRIVEN TO ACHIEVE PROPER, CONSCIENTIOUS AND RESOLUTE LAW ENFORCEMENT. IN ALL OF ITS ACTIVITIES, THE IACP HAS BEEN CONSTANTLY DEVOTED TO THE STEADY ADVANCEMENT OF THE NATION'S BEST WELFARE AND WELL-BEING. WE ADDRESS THIS SUBCOMMITTEE TODAY ON BEHALF OF OUR MEMBERS AND THE THOUSANDS OF LAW ENFORCEMENT OFFICERS WHOSE LIVES ARE THREATENED BY THE AVAILABILITY OF BULLETS CAPABLE OF PENETRATING THEIR SOFT-BODY ARMOR.

AS YOU MAY KNOW, IACP HAS SUPPORTED THE LEGISLATION TO BAN THESE BULLETS SINCE IT WAS FIRST INTRODUCED BY CONGRESSMAN BIAGGI SEVERAL YEARS AGO. THE CONGRESSMAN IS TO BE COMMENDED FOR HIS TIRELESS EFFORTS TO GET THIS LEGISLATION ENACTED. IN ADDITION TO CONGRESSMAN BIAGGI, I WOULD LIKE TO EXPRESS THE ASSOCIATION'S GRATITUDE TO ALL THE COSPONSORS OF THE LEGISLATION. FURTHER, WE WOULD LIKE TO CONGRATULATE THE JUSTICE DEPARTMENT, THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS AND EVERYONE ELSE WHO COOPERATED IN WORKING OUT THE DEFINITIONAL PROBLEMS THAT EXISTED IN THE ORIGINAL LEGISLATION.

BULLET-RESISTANT VESTS HAVE BEEN AVAILABLE FOR QUITE SOME TIME; HOWEVER, BECAUSE THE EARLY VERSIONS WERE SO BULKY AND UNCOMFORTABLE, OFFICERS DID NOT WEAR THEM ROUTINELY. THE RAPID INCREASE IN POLICE INJURIES AND DEATHS DURING THE PERIOD FROM 1960 TO 1970 PROMPTED THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE (NOW THE NATIONAL INSTITUTE OF JUSTICE) TO SPONSOR A PROGRAM TO DEVELOP LIGHTWEIGHT BODY ARMOR WHICH AN OFFICER COULD WEAR CONTINUOUSLY WHILE ON DUTY. THIS PROJECT WAS VERY SUCCESSFUL.

IT IS RECOGNIZED THAT IN ORDER TO PRODUCE A VEST THAT OFFICERS WILL WEAR CONTINUOUSLY, IT IS IMPOSSIBLE TO COMPLETELY PROTECT THEM FROM ALL THREATS. IN ORDER TO AID POLICE AGENCIES IN SELECTING GARMENTS APPROPRIATE FOR THEIR PARTICULAR OFFICERS, IACP IN 1978 COMPLETED A COMPREHENSIVE REPORT ENTITLED "A BALLISTIC EVALUSTION OF POLICE BODY ARMOR." IN THIS STUDY, SOFT-BODY ARMOR WAS CLASSIFIED ACCORDING TO FIVE THREAT LEVELS. AT EACH THREAT LEVEL, THE BULLETS AND CALIBERS WHICH THE ARMOR WAS CAPABLE OF PROTECTING AGAINST WERE IDENTIFIED. EACH DEPARTMENT COULD THEN DECIDE WHICH VESTS WERE NEEDED TO PROVIDE FULL-TIME PROTECTION AGAINST THE THREAT MOST LIKELY TO BE FACED BY ITS OFFICERS.

AS A RESULT OF ALL OF THIS RESEARCH, APPROXIMATELY FIFTY PERCENT OF ALL LAW ENFORCEMENT OFFICERS IN THIS COUNTRY CURRENTLY WEAR BULLET-RESISTANT VESTS. THE RECORD SINCE SOFT-BODY ARMOR CAME INTO REGULAR USE BY LAW ENFORCEMENT OFFICERS HAS BEEN IMPRESSIVE. OFFICER FATALITIES HAVE BEEN SHARPLY REDUCED SINCE 1975, WHEN THE LIGHTWEIGHT

VESTS WERE FIRST INTRODUCED IN QUANTITY, EVEN THOUGH THE ASSAULT RATE HAS NOT BEEN REDUCED. THE VESTS ARE CREDITED WITH SAVING THE LIVES OF SOME FOUR HUNDRED POLICE OFFICERS ACROSS THE COUNTRY. SPECIFICALLY, BETWEEN 1975 AND 1978, TWO HUNDRED FIFTY-FIVE OFFICERS WERE SHOT IN GUN BATTLES WHILE WEARING SOFT-BODY ARMOR. THE VESTS SAVED THE LIVES OF TWO HUNDRED FIFTY OF THESE OFFICERS. THE FIVE WHO LOST THEIR LIVES WERE SHOT IN UNPROTECTED AREAS. IN ADDITION TO MEMBERS OF THE LAW ENFORCEMENT COMMUNITY, THE USE OF BULLET-RESISTANT APPAREL BY POLITICIANS AND OTHER HIGH-LEVEL GOVERNMENT OFFICIALS HAS GROWN IN RECENT YEARS DUE TO THEIR INCREASING EXPOSURE AND VULNERABILITY TO ACTS OF VIOLENCE. HOWEVER, THE SECURITY THAT BULLET-RESISTANT APPAREL PROVIDES IS BEING VIOLATED. A REAL AND IMMEDIATE THREAT HAS BEEN POSED TO THE LIVES AND SAFETY OF PERSONS RELYING ON SUCH PROTECTIVE EQUIPMENT.

UNOFFICIAL TESTS HAVE SHOWN THAT CERTAIN CALIBERS OF THE TEFLON-COATED KTW BULLET CAN PENETRATE UP TO SEVENTY-TWO LAYERS OF KEVLAR. THE MOST POPULAR SOFT-BODY ARMOR WORN BY POLICE OFFICERS IS COMPOSED OF ONLY EIGHTEEN LAYERS OF KEVLAR. IN A TEST CONDUCTED BY THE LOS ANGELES POLICE DEPARTMENT OF A .38-CALIBER KTW BULLET AT A MEASURED VELOCITY OF 1,051 FEET PER SECOND, THE BULLET PENETRATED THE FRONT PANEL OF THE DEPARTMENT'S BODY ARMOR AND CONTINUED THROUGH THREE AND ONE-HALF INCHES OF "DUXSEAL," A SUBSTANCE WITH A DENSITY SIMILAR TO THAT OF HUMAN FLESH. IN ORDER TO PROTECT THEMSELVES AGAINST SUCH A MENACE, OFFICERS WOULD HAVE TO WEAR EXTREMELY BULKY, HEAVY PROTECTION. AS EXPERIENCE HAS SHOWN, THESE VESTS WOULD NOT BE

WORN EXCEPT IN EXTRAORDINARY CIRCUMSTANCES WHEN THE OFFICER KNOWS THE SEVERITY OF THE DANGER HE IS ABOUT TO FACE.

CURRENTLY, FEDERAL LAW DOES NOT RESTRICT THE SALE OF ANY TYPE OF AMMUNITION. DESPITE THE FACT THAT MANUFACTURERS OF AMMUNITION SPECIFICALLY DESIGNED TO PENETRATE BULLET-RESISTANT APPAREL CLAIM THEIR BULLETS ARE FOR POLICE AND MILITARY USE ONLY, THERE HAS NOT BEEN ANY ATTEMPT TO LEGALLY PREVENT THEIR AVAILABILITY TO THE PUBLIC. INDEED, THESE PACKAGING LABELS ARE MERELY A LUDICROUS PLOY TO GAIN MARKET ACCEPTABILITY, SINCE NO ENFORCEMENT OF THE REGULATION IS POSSIBLE. FURTHERMORE, THESE BULLETS ARE NOT USED IN HANDGUNS BY LAW ENFORCEMENT. BECAUSE OF THEIR INCREDIBLE PENETRABILITY AND THE GREAT RISK THAT THEY MAY RICOCHET AND STRIKE AN INNOCENT BYSTANDER, AS WELL AS THEIR LACK OF STOPPING POWER, THESE BULLETS HAVE BEEN FOUND UNACCEPTABLE FOR USE BY LAW ENFORCEMENT AGENCIES. RIGHT HERE IN WASHINGTON, D.C. THE METROPOLITAN POLICE DEPARTMENT HAS EXPRESSLY PROHIBITED OFFICERS FROM CARRYING ARMOR-PIERCING AMMUNITION EITHER ON OR OFF DUTY.

BECAUSE OF THE THREAT FACED BY LAW ENFORCEMENT OFFICERS AND OTHERS WHO RELY ON THE PROTECTION PROVIDED BY SOFT-BODY ARMOR, FEDERAL REGULATION IS ESSENTIAL. WE THEREFORE URGE THE SUBCOMMITTEE TO TAKE QUICK ACTION ON THE MEASURES CURRENTLY BEFORE IT. VARIOUS GROUPS, INCLUDING IACP, HAD EXPRESSED CONCERN THAT THE ORIGINAL LEGISLATION DID NOT PROVIDE AN ADEQUATE DEFINITION OF THE BULLETS TO BE BANNED. THIS PAST FEBRUARY, THE IACP BOARD OF OFFICERS NEVERTHELESS

VOTED UNANIMOUSLY TO PUT ASIDE ALL RESERVATIONS AND GIVE OUR FULL SUPPORT TO CONGRESSMAN BIAGGI'S BILL, H.R. 953. WE ARE PLEASED, HOWEVER, THAT NEW LEGISLATION HAS BEEN DRAFTED THAT RESOLVES THE PROBLEMS AND IS ACCEPTABLE TO ALL CONCERNED GROUPS.

THE RECENTLY PROPOSED BILLS DEFINE "ARMOR PIERCING AMMUNITION" IN SUCH A WAY AS TO COVER ALL MATERIALS WHICH COULD BE USED FOR THE MANUFACTURE OF ARMOR PIERCING AMMUNITION, AND THUS AVOID THE ADMINISTRATIVE BURDEN OF TESTING EVERY TYPE OF AMMUNITION ON THE MARKET. THE TERM IS DEFINED IN A WAY THAT CAN BE EASILY UNDERSTOOD AND APPLIED BY INDUSTRY. THEY EXEMPT AMMUNITION CAPABLE OF PENETRATING SOFT-BODY ARMOR FROM PROHIBITION AGAINST MANUFACTURE AND IMPORTATION WHERE SUCH AMMUNITION IS DETERMINED BY THE SECRETARY OF THE TREASURY TO BE DESIGNED FOR SPORTING PURPOSES, OR FOR USE BY LAW ENFORCEMENT OR THE MILITARY.

THE PENALTIES IMPOSED BY THIS LEGISLATION WILL SERVE TO LIMIT THE AVAILABILITY OF ARMOR PIERCING AMMUNITION TO THE CRIMINAL ELEMENT, THUS PROVIDING LAW ENFORCEMENT PERSONNEL WITH A GREATER DEGREE OF PROTECTION. TO INSURE AN ADEQUATE LEVEL OF DETERRENCE, WE FEEL THAT STRONG PENALTIES, PERHAPS STRONGER THAN THOSE SPECIFIED IN THIS LEGISLATION, SHOULD BE ENFORCED. WE HOPE THAT STATE LEGISLATURES WILL ENACT SIMILAR LEGISLATION THAT WILL IMPOSE PENALTIES ON INDIVIDUALS WHO CARRY ARMOR PIERCING BULLETS DURING THE COMMISSION OF FELONIES IN VIOLATION OF STATE LAW.

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE CAN FIND

NO LEGITIMATE USE, EITHER IN OR OUT OF LAW ENFORCEMENT, FOR THIS TYPE OF AMMUNITION. I URGE YOU TO TAKE IMMEDIATE ACTION ON THIS LEGISLATION. AS LONG AS THE MANUFACTURE AND IMPORTATION OF ARMOR PIERCING AMMUNITION REMAINS UNREGULATED, THE POSSIBILITY THAT A POLICE OFFICER WILL BE KILLED OR SERIOUSLY WOUNDED REMAINS UNACCEPTABLY AND UNNECESSARILY HIGH.

THANK YOU FOR GIVING OUR VIEWS YOUR CONSIDERATION. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

AVAILABLE

Mr. **Hughes**. Mr. Stone. He is not with us? OK. Mr. Konstantin.

Mr. **Konstantin**. Yes.

Mr. **Hughes**. We have your statement which is part of the record, and you may proceed as you see fit.

Mr. **Konstantin**. Thank you, Mr. Chairman.

The Police Executive Research Forum is a membership and research organization whose members are police chiefs and sheriffs from the Nation's largest jurisdictions. We support this legislation because we see it as a step forward toward protecting our Nation's law enforcement officers.

We realize that it is not as comprehensive as many people would like it to be; it is not as restrictive as the Chairman would like it to be, but we realize that in the face of the tremendous anti-gun-control lobby that any more restrictively worded bill would have no chance of passage whatsoever. We would rather see this bill pass than have no bill pass at all.

One of the things that we are concentrating on, sort of tangentially, is being doing with the Treasury Department, and that is to ensure that every law enforcement officer in the Nation has a bulletproof vest. Our figures show that only about 50 percent of them do and that a much smaller percentage of them actually wear them, for various practical and attitudinal reasons. So that is our next goal: to make sure that every police officer has a vest and that they are being worn, because a vest does protect against the vast majority of threats that a law enforcement officer faces.

But in the meantime, we would like to see this legislation passed because we feel that it is the only realistic hope that we have for any kind of bill that restricts the availability of armor-piercing bullets at all.

Thank you. I am open to questions.

Mr. **Hughes**. Thank you, Mr. Konstantin.

[The statement of Mr. Konstantin follows:]

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POLICE EXECUTIVE
RESEARCH FORUM

GARY P. HAYES
EXECUTIVE DIRECTOR

TESTIMONY OF

DAVID W. KONSTANTIN
Research Associate

ON BEHALF OF THE
POLICE EXECUTIVE RESEARCH FORUM

CONCERNING
LEGISLATION TO REGULATE
THE MANUFACTURE AND IMPORTATION
OF ARMOR PIERCING AMMUNITION

BEFORE THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

June 27, 1984

Mr. Chairman, members of the Subcommittee, thank you for giving the members of the Police Executive Research Forum an opportunity to express their views on this important issue. We are pleased to see legislation that would regulate the manufacture and importation of armor piercing ammunition and that would mandate a five-year prison term for possession of the bullets during the course of a violent felony.

As an organization comprised of police chiefs and sheriffs from the nation's largest jurisdictions, we are intimately concerned with any measures that will protect the lives and well-being of America's police officers, and support this legislation as an important step in that direction. Today's law enforcement officer is already subjected to numerous threats, and cannot afford to have the protection provided by newly-developed soft body armor breached by the so-called "cop-killer" bullet. Any legislation that would restrict the availability of this ammunition, as H.R. 5835 and H.R. 5845 would, will help to ensure the safety of those who have dedicated their lives to protecting the public against crime. It is imperative that this legislation be passed, as it will serve as a signal to all police officers that their elected representatives in Washington are interested in their welfare and are aware and concerned about the risks that they face daily. Passage of this bill will be a vote of support for the cop on the street.

Although we have known about the availability and devastating potential of armor piercing bullets for some time, not until now have the parties concerned been able to compromise on a bill whose wording and intent are agreeable to the diverse interests that they represent. Our member law enforcement executives believe that any legislation *more* restrictive than that proposed would not have a realistic chance of passage considering the political climate that currently prevails. The fact that such disparate groups have come together on this issue is encouraging to our members, in that it shows that political differences can be set aside when the matter at hand is as important as the saving of police officers' lives.

Our membership fully intends to monitor the effectiveness of this legislation once it is passed, and we suggest that a formal mechanism be instituted at the federal level to ensure that the new law is being enforced and that its intentions are indeed being realized.

The next task for us, as police executives, is to see that every law enforcement officer in the nation is provided with a bullet-proof vest, and to determine how we can assure that those officers who have them will, in fact, wear them. We are currently working with the Treasury Department, along with other interested groups, toward realizing these goals.

Returning to the matter at hand, we endorse this valuable legislation to limit the availability of "cop-killer" bullets, and look forward to seeing its speedy passage on the House floor.

Thank you very much, Mr. Chairman.

Mr. HUGHES. Mr. Harrington, on behalf of the Fraternal Order of Police, welcome.

Mr. HARRINGTON. Mr. Chairman. I am taking Art Stone's place.

Mr. Chairman, I want to personally thank the members of the committee for giving me the opportunity to state my reasons why I am in favor of this legislation.

I have been a member of the Philadelphia Police Department since July 1940. I served in the motor bandit patrol, the detective division, sergeant in the special investigations squad and the highway patrol.

I speak on behalf of 167,000 police officers throughout the Nation who are members of the Fraternal Order of Police, and serve in Federal, State and local police departments.

In the last 10 years, there have been 1,600 police officers killed in the line of duty, an average of 1 every 2 days, or thereabouts. So the safety of the police officers is our main concern.

This killer bullet that we speak about has no useful purpose whatsoever. The only purpose that it has is to take a human life. I think that the legislation could go further to include the ban on possession and sale of these bullets. But it looks like we will have to settle for a ban on the manufacture and importation of the bullets.

I think that the sale of the bullets and the possession of the bullets, especially the possession because there are many, many people out there with these type of bullets who shouldn't have them at all—they only get them for one purpose.

This bullet has such power it could break two inches of bulletproof glass and that could be construed in many, many ways. I don't want to get into that.

They say that these bullets are for police use only. I don't know one police department that makes its policemen carry these bullets because of the danger involved. They say they fired them to stop a car. But if you fired them to stop a car they got such power that they would ricochet and kill somebody before stopping. Other reasons are that they hamper police work.

If these bullets kill somebody, and you do get the projectile, you will never find what gun it was fired from because you can't tell.

I want to thank the panel for letting me express my reasons.

[The statement of Mr. Harrington follows:]

TESTIMONY

JOHN J. HARRINGTON, PAST NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE
BEFORE THE HOUSE JUDICIARY COMMITTEE, TOPIC: HR 5835, HR 5844, HR 5845

I want to personally thank the members of this Committee for giving me the opportunity to state my reasons why I am in favor of this Legislation.

I have been a member of the Philadelphia Police Department since July of 1940, I have served in the Motor Bandit Patrol, the Detective Bureau, and as a Sergeant in the Special Investigation Squad and the Highway Patrol.

I speak on behalf of 167,000 Police Officers throughout the Nation who are members of the Fraternal Order of Police, and serve in Federal, State and local Police Departments.

In the last 10 years there have been 1,600 Police Officers killed in the line of duty, an average of 1 every 2 days, or there abouts, so the safety of the Officer is our main concern.

The KILLER BULLET serves NO useful purpose, other than the taking of a human life. For the sportsman to say that the banning of the Teflon Bullet will deprive them of the enjoyment of their chosen sport is not a valid arguement, because;

1- The use of the Teflon Bullet for target practice is expensive. The cost of 1 Teflon Bullet is approximately 60 cents, as opposed to a cost of 4 or 5 cents for a normal bullet.
2- To use this Bullet for target practice is flirting with a catastrophe because this Bullet will penetrate the average bullet stop now used at Ranges, which could cause an innocent bystander to be seriously injured, or killed.
3- The constant use of this Bullet will blow the riflings out of the barrel, ruining the gun.
4- What sportsman would shoot a rabbit, or any animal, with a Bullet that will penetrate 72 layers of Kevlar, which is the equivalent of 4 bullet proof vests, the kind currently used by Law Enforcement.
5- What type of sportsman would attempt to shoot a deer with a bullet that would pass right through the animal, not killing it, but only injuring it, and which could very easily hit another hunter.

6- The penetrating power of this Bullet is so great, that it can go through 2 inches of bullet proof glass.

Today, this Bullet can be purchased over the counter, in any gun or sporting goods store, as was brought out in testimony by Sen. Moyihan, Cong. Biaggi, and other experts in this field.

This legislation could go further, and ban the possession of this Bullet, but we will settle for a ban on the manufacture and sale of the Bullet

I want to thank the Committee, and I am open for any questions you may have, again, Thank You.

John J. Harrington

Mr. Hughes. Thank you, Mr. Harrington.

I thought that the meeting on Monday was an excellent one at the Federal Law Enforcement Council and I support your support of the crime caucus also.

Mr. Harrington. Thank you.

Mr. Hughes. Thank you.

Mr. Murphy.

Mr. Murphy. Good afternoon, Mr. Chairman.

The International Brotherhood of Police Officers is one of the largest police unions in the country. We are an affiliate of the Service Employees International Union, AFL-CIO, and represent police officers in Federal, State, and local governments nationwide.

We testify today and have supported since 1982, efforts to immediately remove cop-killer bullets from the hands of criminals. While we present testimony in support of the bill, we also raise some concerns in our written remarks. These concerns have been amplified at today's hearings, particularly the answers submitted by some of the administration witnesses this morning.

We would like to talk about some of these concerns briefly. The bills, which are identical, basically, define armor-piercing ammunition as solid projectiles or projectile cores which are constructed from a list of certain alloys.

We think what needs to be addressed is the question what percentage of known armor-piercing handgun ammunition does this legislation prohibit?

The questioning this morning and further elaborated this afternoon appear to elicit a response that the legislation would exclude only a very small percentage of known cop-killer bullets. The purpose of this bill, of course, is to protect police officers, and to fulfill this purpose, substantially all cop-killer bullets must be covered by the definition or it is meaningless.

Second, while the bill prohibits the manufacture and importation of these bullets, it does not prevent the sale of bullets already in the stock of dealers. This leaves the stock of cop-killer bullets of an indeterminate size which can be purchased by the criminal element. We believe that steps must be taken to limit the availability of these bullets.

Mr. Chairman, we were not a part of discussions with the administration on this bill. We do not agree that this bill cannot be amended. We believe that substantial changes must be made in the bill but to be effective in fulfilling its real purpose, which is, of course, to protect police officers.

We would like to make a brief remark that we appreciate the longstanding efforts of Congressman Mario Biaggi, in this matter. We also appreciate the work of the Chair and the subcommittee, particularly the work of today's hearings.

We would like to work with the subcommittee to amend this bill so it can serve a useful purpose, the purpose for which it was designed: to protect police officers.

[The statement of Mr. Murphy follows:]

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS
AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL/CIO
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Statement Of

The

International Brotherhood of Police Officers

Before

The Subcommittee On Crime

Of The

House Judiciary Committee

On HR 5835, HR 5845

June 27, 1984

The International Brotherhood of Police Officers (IBPO) is pleased to have this opportunity to present our views on HR 5835, and HR 5845. This legislation seeks to retard the proliferation of certain bullets popularly known as "Cop Killer Bullets."

The Internationl Brotherhood of Police Officers is one of the largest police unions in the country. We are an affiliate of the Service Employees International Union (AFL-CIO) and represent police officers in federal, state, and local governments nationwide. Our union has long been a leader in efforts to improve the safety and working conditions of police officers.

We testify today in strong support of HR 5835, and HR 5845 legislation which will limit the access of criminals to so called "Cop Killer Bullets." This legislation, which has broad bipartisan support offers the best opportunity to provide immediate relief to the our nation's police officers from the dangers of these bullets.

It is well documented that the police officer has one of the most dangerous occupations in the nation. During the last year, 147 officers died in the performance of their official duties. During the last ten years more than 1600 officers were killed in the line of duty. One of the major causes of police officers death and maiming have been from gunshots. During 1982, for instance, almost 440 police officers were injured as a result of gunshot wounds.

Since the 1970's when soft body armor was first developed increasing numbers of police officers have turned to vests as a means of protecting themselves against gunshots. It is estimated in fact that up to 50% of the nation's police community uses body armor. With improvements in the comfort and versatility of the vests, it is expected that the number of officers who receive the physcial and psychological security these vests provide will continue to rise.

In late 1981 it came to widespread public attention that certain classes of bullets were being manufactured, imported and sold whose sole purpose was to penetrate body armor. This ammunition became popularly known as "Cop Killer Bullets." These bullets were doubly threatening to police officers, first because it had the potential to penetrate the armor and defeat the physical and psychological security provided by the vests and secondly the existence of these bullets had the potential to undermine police efforts to gain broader community support for the purchase of these vests.

Our union was heartened by the prompt attention this threat to police security received in Congress. In 1981, and early 1982 Congressman Mario Biaggi introduced and aggressively supported legislation which would limit the availability of "Cop Killer Bullets." The Law Enforcement Officers Protection Act of 1980 (HR 5437) limited the availability of this ammunition by preventing the manufacture importation or sale of bullets which when fired by a handgun with a barrell five inches or less in length is capable of penetrating body armor. This Subcommittee promptly scheduled hearings on this problem and has been instrumental in maintaining public focus on the problem. We first testified before this Subcommittee on "Cop Killer Bullets" in May 1982.

Despite Congressional interest, and a growing public sentiment favoring strict limits on the availability of these bullets, legislation has been hampered; up to this time, by concern that the bill would restrict bullets with legitimate sport usage. This was never the intention of this union, or we believe the framers of this legislation. The Administration, despite some division in their ranks, voiced concern for preventing criminals access to these bullets, and even stronger concern with the effects of an overinclusive definition of the restricted ammunition. We are very pleased that a workable definition of the excluded ammunition has been arrived at in HR 5835 and HR 58

The IBPO strongly supports HR 5835 and HR 5845 which provides a workable definition of body piercing ammunition, allowing for expeditious passage of legislation limiting criminal access to these bullets. These bills, which are virtually identical, define armor piercing ammunition as solid projectiles or projectile cores which are constructed from tungsten alloys, steel, iron, brass, bronze, beryllium, copper, or depleted uranium. Exempted from this definition is any ammunition which the Secretary finds is "primarily intended for sporting purposes." This bill prohibits the manufacture, or importation of armor piercing legislation. Stiff criminal penalities are also provided for the use of this ammunition in the commission of a violent felony.

In our view these bills offer the best opportunity to address the problem of "Cop Killer Bullets" immediately. We believe that immediate action is necessary to prevent the unnecessary injury or death of police officers and to restore the sense of security which these vests provide. We urge this Sub-Committee to promptly mark up and support passage of this legislation.

There are some concerns with the bill which we would like to voice at this time. While the bill prohibits the manufacture and importation of these bullets it does not prevent the sale of bullets already in the stock of dealers. This leaves a stock of "Cop Killer Bullets" of an indeterminate size which can be purchased by the criminal element. We believe that steps must be taken to limit the availability of these bullets. We urge the Sub-Committee to draft language mandating the Treasury to undertake a vigorous education program to gain voluntary dealer support to restrict the sale of these bullets.

We are also concerned with provisions of the bill which grants the Secretary power to exempt a projectile otherwise covered by the definition of armor piercing ammunition where the Secretary determines the ammunition is "primarily intended for sporting purposes." While the intent of this provision is legitimate, the language allows for an overbroad exception. We urge that a more definite standard be provided the Secretary to ensure that the exception does not swallow the rule. We would like to work with the sub-committee to address these loopholes in the bill.

We would like to thank the Sub-Committee once again for it's continued attention to this problem. We would also like to thank Congressman Biaggi for his continued advocacy on behalf of police officers. We also would like to thank the Sub-Committee once again for this opportunity to testify.

Mr. **Hughes**. Thank you, Mr. Murphy, for that testimony. I appreciate that.

We have a vote on, and it is an important vote, and we have about 7 minutes to get to the floor. I don't know if any of you are under a time constraint. Are you? Can you remain for another 15 minutes or so?

Mr. **Darwick**. Yes, sir.

Mr. **Harrington**. Yes.

Mr. **Murphy**. Yes.

Mr. **Hughes**. I think that would be better rather than to rush into questioning and try to finish it up because I have a number of questions. So we are going to stay in recess for about 15 minutes while we catch our vote. Thank you.

[Recess.]

Mr. **Hughes**. I would just ask the panel whether or not the panel agrees at this point, after hearing the testimony, that this proposal does really very, very little. Does everbody agree with that?

Mr. **Darwick**. I guess I don't agree that it does very little.

Mr. **Hughes**. Let me just walk you through it.

By definition, it would appear that the only thing that is covered is the manufacture of this special type of ammunition, that the manufacturers have already agreed not to sell to retailers, No. 1.

No. 2, that it does not cover ammunition that is already in the marketplace possessed by dealers and others which present a high degree of risk.

No. 3, this special ammunition represents a very, very infinitesimal part of the overall supply of so-called armor-piercing ammunition, that is, ammunition that will pierce soft body armor.

Now, under those circumstances I don't see how you can come to any other conclusion.

Mr. **Darwick**. I don't think that the manufacturers and the retailers are the only problem. It didn't surprise me at all to hear you say at your meeting that at the Law Enforcement Council meeting last Monday that a police officer told you that the only way that they could get these things was to put the word out on the street that they were looking for them. It occurs to me that that is where they come from—they are stolen, and they are made available to the criminal.

Mr. **Hughes**. We are not reaching that, though.

Mr. **Darwick**. Sir?

Mr. **Hughes**. We are not reaching that, we are not making the possession of that ammunition a crime or the sale of it a crime.

Mr. **Darwick**. No, but we are making use of crime.

Mr. **Hughes**. We are banning the sale, we are banning the manufacture of this special ammunition. That is all, we are not doing anything more than that.

Mr. **Harrington**. I think the possession of the bullets is the most dangerous thing.

Mr. **Hughes**. And we are not covering possession.

Mr. **Harrington**. No, I know it isn't covering it.

Mr. **Konstantin**. But we are covering possession of the bullets in the course of a violent felony, which is not covered by any statute at this time.

Mr. **Hughes**. But we are not covering the use of the handgun in the commission of a violent felony. Do you find that ironic?

Mr. **Konstantin**. Yes, I do. But I think you will agree that broader handgun legislation is beyond the range of this bill, beyond the range of the intent of the drafters of this bill, and that we are only dealing with armor-piercing ammunition .

Mr. **Hughes**. That may be so but this subcommittee has jurisdiction to fashion a bill that this subcommittee is comfortable with, and it is going to do something.

Mr. **Konstantin**. We are very encouraged that everyone: the NRA, the administration, the Democrats, has gotten together behind any handgun bill that restricts——

Mr. **Hughes**. But if you have gotten together on a proposal which basically gives away the store, which in essence does very little, what do we have?

Mr. **Konstantin**. We consider it a first step.

Mr. **Hughes**. A first step toward what? The manufacturers have already agreed that they will not manufacture this ammunition. So, all we are doing is codifying what they have already agreed to do. This legislation doesn't cover somebody else that varies the ingredients somewhat, as you have probably learned from today's testimony. It would be very easy to defeat the intent of this legislation by devising alloys somewhat different than we find in this particular proposal.

Mr. **Darwick**. It sounded to me, though, that that problem could be handled if you would include in the definition a discussion about ferrous content. I couldn't hear all of the discussion by the technician that was on this end of the table, but that is what I gathered from his discussion, that the mere inclusion of ferrious content would rectify any problem that existed. That was the first time that I think any of us had heard any discussion about that.

Mr. **Hughes**. One of the experts testified that that wouldn't necessarily cover it because there are other substances besides ferrous substances that could be used in combination to form a core that could just as easily defeat the definition.

Mr. **Harrington**. These bullets have no value at all. They have no use for anything at all except killing people. I think if you went further and outlawed the possession of these bullets, people who have them can't use them for any legitimate reason. But I think if you go attaching guns to the bill, I think you will run into a heck of a lot of opposition.

Mr. **Hughes**. That may or may not be the case.

This committee like, I suppose all subcommittees, have to decide, first of all, what is in the public interest. Would you all agree that at this point this ammunition is not being manufactured by voluntary ban?

Mr. **Harrington**. Yes.

Mr. **Hughes**. So there is not an imminent danger and this bill is not going to correct an imminent danger because none of the manufacturers have expressed an intent to change their mind.

The risk, as I see it, comes from a different direction. The risk comes from the possession of that ammunition, the sale of that ammunition; the risk comes from someone coming up with a variation that avoids this definition; and the risk comes from other types of armor-piercing ammunition that this doesn't begin to touch.

Mr. DARWICK. I am willing to agree that the responsible manufacturers are not manufacturing the ammunition but there are thousands of people out there who make ammunition. Ninety percent of them are sportsmen, people who are target shooters, that make their ammunition, but there is also a criminal element out there that makes ammunition.

So I am not willing to say that there is no danger because six manufacturers have said, we, the responsible manufacturers, are not going to make this ammunition.

Mr. HUGHES. But they have been identified as the only manufacturers that are manufacturing this special ammunition.

Mr. DARWICK. The only legitimate and licensed manufacturers.

Mr. HUGHES. Are you familiar with any other ammunition that is on the marketplace?

Mr. DARWICK. I know the possibility is there—no, I couldn't put my finger on——

Mr. HUGHES. There is the possibility of anything, but I am not aware of any other manufacturers manufacturing this special type of ammunition.

The difficulty I have is that we want to do something meaningful. I am not sure that just saying basically we are going to confirm what the voluntary agreements have already said, that is, that the manufacturers are not going to manufacture this special equipment, really gets us very far. And that is my concern.

I thought we had been making some progress in trying to determine through a testing procedure and other ways to try and develop a standard that would be balanced, so that we could balance the interest of protecting the law enforcement community and yet not inconvenience the legitimate sporting public, and I thought we were making some progress.

Frankly, I look upon what came out of this draft as something that really does not add very much. The fact that the groups came together, I think is important, but if in fact the end product doesn't provide that much additional protection for the law enforcement community, what have we done?

You know, the administration said you can't change it—well, obviously, this bill has some imperfections. And this committee, I can tell you, examines legislation on the basis of the merits. This committee is going to decide, and the Congress is going to decide, as a matter of policy, what we feel is in the public interest. That decision rests with us. Frankly, I want to do something meaningful.

Mr. KONSTANTIN. Mr. Chairman, quite frankly, we would have loved to have seen a more restrictive armor-piercing bullet bill, but we don't want to wait for 5 years, as Congressman Biaggi has since he came up with this idea. There has never been any question about how devastating and dangerous these bullets are and that there is a need to control them. Five years ago, Mr. Biaggi started working and working very hard, and he finally has a bill that looks like it has a very good chance of passage.

We don't want to take this bill and the momentum that it has and change it so drastically that there will be so much opposition to it that we are going to wait another five years to see any armor-piercing legislation.

Mr. HUGHES. When you were consulted on this legislation, were you aware of the fact that this pretty much just confirms what has already been done? Was your organization aware of that?

Mr. KONSTANTIN. We were not made aware of the bill until it was more or less completely drafted.

Mr. HUGHES. Yes. Was anybody aware of just what the thrust of the bill was? I am of the opinion, and I have talked to the law enforcement community as has Mr. Biaggi, and I have talked at some length with individual Members, and they were not aware of the fact that all we are doing basically is confirming what has already been extracted voluntarily from the industry.

Were your organizations aware of that when you signed onto this bill?

Mr. HARRINGTON. No.

Mr. DARWICK. We knew that it addressed six basic bullets which we think are the most common and the most readily available bullets that are manufactured not only in this country but I think Hungary is the other country that sent some bullets here that have the same capability. So, we knew that.

And because of the problems we have had over the last 3 years. We have been very actively involved in this area, and we know the definition problem is a nightmare, it is a very difficult thing to figure out.

Mr. HUGHES. We all know that. When Mr. Sawyer said earlier—and he is so right about it—when we first took up this issue and received some testimony, we were laboring under the impression it was going to be a fairly easy task. Yet it is a technical nightmare trying to deal with all the variables, and to come up with something that is rational. That is the reason we really have taken some time in trying to craft something that makes sense, as I am sure the law enforcement community wants to come up with something that is meaningful and makes sense.

But my question is were you aware, when you signed onto the legislation, that it basically only confirms what has already been extracted from the industry voluntarily? Mr. Harrington.

Mr. HARRINGTON. No, I wasn't, I wasn't at that meeting, so I wasn't aware of it until the bill was drafted. But I strongly think possession of the bullet is the most dangerous part of the bill. You know, it should be in the bill, the possession of it.

Mr. HUGHES. And sale.

Mr. HARRINGTON. Because they are not making them now, and they won't make them in the future.

Mr. HUGHES. How about sale?

Mr. HARRINGTON. Sales, too. I think you had a good idea in buying the bullets off the sporting goods place. I think it was a good idea but there are thousands of these bullets out in people's possession and they have no use for the bullet but to kill somebody. You can't hunt with it, you can't shoot rabbits with a bullet that is going to go through 78 layers of Kevlar. You can't shoot deer with it. You can't target practice with it, it would blow the rifling out of your revolver. So what good is it? It is no good—for only one thing: killing the person.

Mr. Hughes. Mr. Murphy, I was intrigued by your statement. Was that the statement that you prepared when you came in here today?

Mr. Murphy. Mr. Chairman, we had drafted a written testimony for the record and we stated some concerns. We were not part of the meetings with the administration. We did not sign onto the bill, although in our written testimony we did endorse the bill while stating some concerns. In talking to people who were involved with the meetings and were invovled with the field and the drafting of the two bills, it was our understanding that the definition would exclude the vast majority of armor-piercing bullets that were on the street, or could be put on the street.

We understood from the beginning that there were some problems, some loopholes in it. But I think this morning's testimony from the administration, which apparently is the main proponent of the bill, that 1 percent of the bullets would be covered by the definition, to us, we would be asking our members to be duped, if, in fact, that is correct. If, in fact, you know, the person understood the question and responded correctly—you know, I think we would be asking our members to be duped.

If I could—in preparing for the testimony, we reviewed a letter that we received from the Justice Department. It was from Robert McConnell, Assistant Attorney General, and in it he was quoting testimony that Mr. Giuliani gave before this subcommittee in May. And if I could just quote a section of that, he says:

> Because we see no legitimate reason for the private use or possession of handgun bullets such as the KTW that is designed for armor penetration, we will continue to work with the Department of the Treasury and with this subcommittee to develop a workable definition of such bullets. In this connection, if there is to be a margin of error and speculation and being over-inclusive or under-inclusive, we should err on the side of protecting the lives of law enforcement officials and other potential victims of armor-piercing bullets. Our clear objective is to prevent criminals from having access to handgun bullets designed to penetrate armor.

We endorse that approach. As far as the technicalities of the definitions——

Mr. Hughes. Do you think that we have met that standard in this proposal?

Mr. Murphy. I certainly do not. In fact, we met the underinclusive; we protected the gun owners to perhaps the liability of the police officials.

Mr. Hughes. Let me ask you a question about your own feelings. I asked Mr. Epps about your support for a proposal that would make it a felony to carry a handgun in the commission of a Federal offense and requiring an automatic mandatory sentence for that offense. Carrying of a handgun in the commission of a Federal offense whether an act of violence, or whatever, do you support a mandatory sentence?

Mr. Murphy. I am not sure that our union has taken a position on that proposal.

Mr. Hughes. How about just carrying ammunition that would be classified as armor-piercing? If we could develop a standard that would define——

Mr. Murphy. Yes; I think they definitely would have a position on that, and that is that that should be a felony.

Mr. HUGHES. How about on a waiting period for securing a handgun? Has your union taken a position on that? That is, a reasonable period of time, 15 days or whatever, to give the police an opportunity to check and see if it is a felon that has made an application for a handgun, or a lunatic?

Mr. MURPHY. We have not taken a position on that, to my knowledge. But I think I know what it would be, but, you know, it makes no sense for me to say it, just speaking as myself and not on behalf of the union.

Mr. HUGHES. Would you agree that there is more risk to law enforcement because we don't have in place a waiting period so that we can check to see if an applicant for a handgun has a felony record than there would be from, let's say, the proposal we have before us?

Is there more risk because we are not doing a good job of screening applicants for handguns to see if they have felony records or they have mental histories than the risk that is involved that is trying to be addressed in this particular bill?

Mr. MURPHY. I think that the problem, first of all, is trying to protect police officers. And to the same extent, we want to leave legitimate rights to sportsmen to participate in their hobbies.

Mr. HUGHES. Do you think it is unreasonable to say to somebody that is applying for a handgun, look, you have got to wait for 15 days so we can run a police check, to see whether or not when you answer the questions do you have a criminal record, and the question do you have a mental history, any mental problems—when you answer those questions no, to give us an opportunity to check? Do you think that is unreasonable?

Mr. HARRINGTON. We have that condition in Philadelphia and it is working very well.

Mr. HUGHES. We have it in New Jersey and it works very well.

Mr. HARRINGTON. You can't buy a gun unless the police investigate it.

Mr. HUGHES. But that is not the case in every jurisdiction and it is easy to defeat it, just by going to a jurisdiction that does that kind of waiting period.

Mr. HARRINGTON. Yes, I know.

Mr. HUGHES. Does anybody think that that is unreasonable?

Mr. HARRINGTON. No.

Mr. KONSTANTIN. No.

Mr. HARRINGTON. No, I don't.

Mr. HUGHES. Does anybody disagree that if you talk about high risk to law enforcement, that they are to screen applicants to try to match up felony records and mental histories presents a high risk? Does anybody disagree with that? Not just the police officers but to society?

I talked to Mr. Biaggi several times on breaks today and it is our effort to try to work with the law enforcement community to see if we can't do something that is meaningful, and your testimony today has been very, very helpful, and I appreciate it. I am sorry that we have taken so much time today.

Mr. HARRINGTON. That is all right.

Mr. Hughes. I didn't realize that we would have so many interruptions. But thank you for assisting us, and we look forward to working with you.

Mr. Harrington. Thank you.

Mr. Konstantin. Thank you.

Mr. Murphy. Thank you.

Mr. Darwick. Thanks, Mr. Chairman.

Thank you very much.

The hearing stands adjourned.

[Whereupon, at 3:25 p.m., the subcommittee adjourned.]

[Additional statements for the record follow:]

Testimony of the
HONORABLE SILVIO O. CONTE
House Committee on the Judiciary
Subcommittee on Crime
June 27, 1984

Mr. Chairman, and members of the Subcommittee, one of the most important protections developed for our law enforcement personnel in the last several decades is soft body armor. Unfortunately, the true effectiveness of this development is threatened by the illegitimate and criminal use of ammunition that has the capability of piercing this armor.

We are all familiar, however, with the definitional problems that have prevented enactment of legislation banning the manufacture and use of this ammunition. Expert ballistics people in the Justice and Treasury Departments have been working over the past three years in hopes of fashioning an acceptable definition of the term "armor-piercing". At the hearing held two years ago on this subject by this Subcommittee, then Deputy Assistant Treasury Secretary Robert Powis alluded to the definitional problem. He stated that attempts to define armor-piercing cartridges "invariably include a wide range of ammunition commonly used for hunting, target shooting, or other legitimate and long-established purposes." The Justice Department, represented by then Associate Attorney General Rudolph Giuliani, put it more succinctly: "The simple fact is that some bullets with a legitimate use will defeat soft body armor."

As a hunter of many years with some knowledge of firearms and their capabilities, I can testify to the difficulties that have confronted experts. Most notably, these include the fact that many rifle and handgun cartridges are now interchangeable, and the fact that armor-piercing capability is a function of not one but several factors, including caliber, velocity, firing distance, bullet composition and shape, and firearm used.

While officials wrestled with this definitional problem in hopes of finding an acceptable, long-term solution, I felt there was an immediate protective measure that could be adopted — mandatory sentencing. Every bill filed that sought to address this problem contained a mandatory sentencing provision, and mandatory penalties have been recognized as an effective deterrent to violent crime. That conclusion is supported by the latest Uniform Crime Report issued by the FBI. It was for these reasons that I introduced H.R. 3796, which outlined an interim mechanism for defining "armor-piercing" that would allow the mandatory sentencing provision to be enacted without further delay. As I noted in the testimony that I submitted to this Subcommittee at the hearing held on May 17 on H.R. 3796, "It may be possible at some future date to classify successfully as armor-piercing that ammunition which has no legitimate sporting use and which imperils our law enforcement sector. In the meantime, however, it is our responsibility to provide an immediate deterrent to that element of our society which chooses to use illegitimately and criminally ammunition capable of penetrating soft body armor. H.R. 3796 provides us with the mechanism we need to impose immediately that deterrent."

Mr. Chairman and members of the Subcommittee, that future date is here. The workmanlike efforts of the Justice and Treasury Departments have paid off, and an objective definition of "armor-piercing" that will allow us to ban that ammunition which has no legitimate use has been fashioned. It is embodied in H.R. 5845, and I am pleased to be a cosponsor of this bill which has generated bipartisan support. The measure also enjoys the endorsement of our nation's chief law enforcement organizations, and is supported by sportsmen and groups representing that community, including the National Rifle Association.

As I noted in my May 17 testimony, "An objective definition that will not penalize our law-abiding citizens but will make unavailable armor-piercing ammunition that truly has no legitimate purpose is eagerly anticipated by all involved with this issue." The time has come for us to remove the menace of armor-piercing ammunition that imperils the safety of our law enforcement personnel. I hope this Subcommittee will move swiftly in approving this legislation and reporting it to the floor of the House of Representatives for action.

Thank you.

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SEP 12 1984

September 11, 1984

The Honorable William J. Hughes
U.S. House of Representatives
341 Cannon House Office Building
Washington, DC 20515

Dear Mr. Hughes:

I am writing to correct an error which appeared in my letter of August 29, 1984, regarding legislation to ban armor-piercing bullets. In my lette I inadvertently urged your support of H.R. 6067 which was approved by the House Judiciary Committee. My intention was to ask for your support of H.R. 5845.

The Association has remained steadfast in its support of H.R. 5845. When this bill was introduced, we agreed with the Administration, the National Rifle Association and various police organizations that it was an acceptable compromise for dealing with the problem of armor-piercing ammunition. At no time have we changed our view. I regret any confusion which may have resulted.

We are very anxious to see legislation enacted this year. The lives of too many people are at stake to allow this matter to be delayed any longer. Because of the broad-based support which H.R. 5845 enjoys, we believe that it has the best chances for passage. We urge you to give H.R. 5845 your vote.

Sincerely,

Howard L. Runyon, Sr.
Howard L. Runyon, Sr.
President

JOHN SPELLMAN
Governor

NEIL W. MOLONEY
Chief

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November 23, 1983

Mr. William J. Hughes, Chairman
U.S. House of Representatives
Committee on the Judiciary
Washington, D. C. 20515

Dear Mr. Hughes:

Thank you for soliciting my input into your legislative proposal. I still adhere to the position stated in my first letter, which is to completely outlaw all armor-piercing ammunition and firearms. However, if this recommendation is not possible, then I am in favor of imposing stiff penalties to those who use armor-piercing ammunition and/or firearms in the commisson of a crime. Additionally, I prefer to make it a crime for anyone to possess such items for anything other than legally prescribed sporting, police, or military purposes.

I agree there are some technical wording problems with the drafting of the initial measure. The proposal's attempt to define projectile ammunition would invariably include a wide range of ammunition commonly used for hunting, target shooting, or other legitimate and long established sporting purposes. While the intent of the bill is to regulate that ammunition which can penetrate bullet-resistant vests and apparel, it would be likely to include other ammunition readily available in commercial channels which are not designed or intended to penetrate soft body armor.

The penetrable ability of a bullet or projectile is easily influenced by many factors including but not limited to, quantity and type of propellent power; length of gun barrel; amount of explosives; mass and shape of the missile; type of projectile; bullet configuration; bullet density; and bullet velocity. Therefore, it appears the best alternative would be to ban armor-piercing ammunition and handguns altogether. However, if this is not possible, then a proposal should be adopted which specifically deals with those people who alter any facet of a handgun and/or ammunition in order to improve their penetrable power.

I think the basic principle the law enforcement community adheres to is: prompt and adequate action should be taken against criminals, especially violent offenders, who threaten or attack law enforcement officers. With that principle in mind, I would support the recommendations of the federal law enforcement agencies. They feel, as do I, that the only working approach is to impose, with vigor and justice, mandatory penalties for the use or possession of "armor or metal-piercing" ammunition in the commission of a crime.

Mr. William J. Hughes
Page 2
November 23, 1983

The March 25, 1982, Congressional Research Service's article, "Bullet Threats to Protective Body Armor" appears to contain a viable definition of what constitutes armor-piercing ammunition. It states in part, "...armor or metal piercing bullets are; generally constructed of steel-jacketed lead or hard metal alloys; often pointed in shape rather than being flat, rounded, or hollow pointed; and generally high velocity." This definition could be used as the initial test to determine whether a bullet is armor piercing and whether its possession or use in the commission of a crime warrants additional punishment.

If the revised measure was to restrict use of armor-piercing ammunition instead of identification and regulation, I feel it would prove to be a more feasible solution. As currently worded, the bill imposes a great burden on the agency(s) testing to determine whether a handgun and its accompanying ammunition is armor-piercing. At present, virtually all ammunition would need to be tested, both domestic and foreign, and it would be continuous testing because of the constant changing of handguns and ammunition. Additionally, the testing would involve an insurmountable amount of variations given the many combinations of factors that influence penetrable power.

It is admirable you are undertaking this task to improve the safety of our law enforcement officers. I am grateful to be able to provide assistance to you in presenting an effective piece of legislation. If you have any other questions or are in need of further assistance, please feel free to contact me again.

Sincerely,

N. W. Moloney

CHIEF NEIL W. MOLONEY

NWM:ab

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Norman Darwick
Executive Director

AUG 22 1984

August 20, 1984

The Honorable William J. Hughes
United States House of Representatives
341 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Hughes:

In response to a request for comments on H.R. 6067, the Law Enforcement Officers Protection Act, I would like to express the continuing support of the International Association of Chiefs of Police for legislation to ban armor-piercing ammunition.

Since soft body armor became widely available in 1975, the lives of some 400 law enforcement officers have been saved by this equipment. The security which these bullet-resistant vests provide is being violated, however, by the unrestricted availability of ammunition designed to penetrate that protection. The lives of our nation's law enforcement officers and others who rely on the protection of soft body armor are being placed in unnecessary jeopardy. Federal legislation is crucial to control this threat.

We are very anxious to see realistic legislation enacted this year. The recent introduction of H.R. 5845, which has the support of the Administration and the National Rifle Association, as well as the law enforcement community, was a very encouraging step in that direction. The Board of Officers of the IACP has overwhelmingly endorsed this bill. We feel that it has the best chances of surviving the legislative process. We therefore urge the Committee and Congress to pass H.R. 5845.

Thank you for your consideration of our views.

Sincerely,

Norman Darwick

Norman Darwick
Executive Director

AVAILABLE